

AGENDA

TUSAYAN TOWN COUNCIL SPECIAL MEETING

PURSUANT TO A.R.S. §38 – 431.03

Wednesday, September 25, 2013 at 6:30pm

TUSAYAN TOWN HALL

845 Mustang Drive, Tusayan, Arizona

Pursuant to A.R.S. § 38-431.03, notice is hereby given to the members of the Tusayan Town Council and to the general public that the Tusayan Town Council will hold a meeting open to the public on Wednesday, September 25, 2013, at the Tusayan Town Hall. If authorized by a majority vote of the Town Council, an executive session may be held immediately after the vote and will not be open to the public. The Council may vote to go into executive session pursuant to A.R.S. §38-431.03.A.3 for legal advice concerning any matter on the agenda, including those items set forth in the consent and regular agenda sections. The Town Council may change, in its discussion, the order in which any agenda items are discussed during the course of the meeting.

Persons with a disability may request a reasonable accommodation by contacting the Town Manager at 928-638-9909 as soon as possible.

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you silence it at this time to minimize disruption of today's meeting.

TOWN COUNCIL SPECIAL MEETING

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. ROLL CALL

**MAYOR GREG BRYAN
VICE MAYOR AL MONTOYA**

**COUNCILMEMBER BILL FITZGERALD
COUNCILMEMBER JOHN RUETER
COUNCILMEMBER CRAIG SANDERSON**

**One or two Councilmembers may attend by telephone.*

3. DISCUSSION OF THE STILO DEVELOPMENT PROJECT

The Town Council may decide to go into executive session pursuant to A.R.S. § 38-431.03.A.3 and A.4 for legal advice from the Town Attorney on asserting remedies pursuant to the current Stilo Development Agreement and to give the Town Attorney and Town negotiating representatives directions regarding negotiations concerning an amendment to the Stilo Development Agreement

Following the executive session the Town Council may take action to either (i) approve a conceptual draft First Amendment to the Stilo Development Agreement, (ii) approve a final draft for approval at a subsequent Council meeting or (iii) give the Town Attorney direction regarding asserting remedies under the current Stilo Development Agreement.

4. MOTION TO ADJOURN

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the General Store in Tusayan, Arizona on this _____ day of September 2013 at _____ pm in accordance with the statement filed by the Tusayan Town Council.

Signature of person posting the agenda

When Recorded, Return to:
Town Clerk
Town of Tusayan
PO Box 709
Tusayan, AZ 86023

With a copy to:
Grady Gammage, Jr.
Gammage & Burnham
Two North Central Avenue
Fifteenth Floor
Phoenix, AZ 85004

**FIRST AMENDMENT
TO
PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT
Agreement No. __**

**BETWEEN THE TOWN OF TUSAYAN,
an Arizona municipal corporation**

and

STILO DEVELOPMENT GROUP USA, LP

This First Amendment to Pre-Annexation and Development Agreement (the "**First Amendment**") is entered into as of the ___ day of _____, 2013 ("**Effective Date**"), by and between the **TOWN OF TUSAYAN**, an Arizona municipal corporation (the "**Town**") and **STILO DEVELOPMENT GROUP USA, L.P.**, an Arizona Limited Partnership ("**Stilo**"). For purposes of this First Amendment, Stilo and the Town are herein referred to collectively as the "**Parties**."

RECITALS

A. The Town and Stilo entered into the Pre-Annexation and Development Agreement, dated as of July 1, 2011 (the "**Prior Agreement**"). The Prior Agreement was determined to be a legislative act pursuant to stipulation in the matter of Stilo Development USA, LP, et al. v. Town of Tusayan, et al., Case No. CV2012-00080, Coconino County Superior Court.

B. The parties now desire to make administrative modifications to certain provisions of the Prior Agreement and establish requirements that Stilo must satisfy in order to vest zoning on the Stilo Parcels.

C. Because the provision of housing for residents of the Town continues to be of critical importance to the Town and Stilo, this First Amendment also modifies Stilo's obligations concerning temporary housing currently under construction on CV and to be built on CV and establishes a process for possible financial assistance for home purchasers and relocation assistance for moving housing units from CV to permanent locations.

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth in this First Amendment, the Town and Stilo state, confirm, and agree as follows:

AGREEMENT

1. **Recitals**. The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.

2. **Prior Agreement**. The terms of the Prior Agreement are incorporated by reference, unless expressly modified by this First Amendment. Capitalized terms and Exhibit references not otherwise defined herein shall have the meaning ascribed to such terms in the Prior Agreement.

3. **Definition of Final Town Approval**. The date of the "Final Town Approval," as that term was defined in the Prior Agreement, shall be April 8, 2012.

4. **Planning and Zoning of Parcels**. The following shall be added as Section 4(d) to the Prior Agreement:

(d) Zoning Stipulation Modification. The Stilo Parcels shall be developed as described in the modified zoning stipulations attached as *Exhibits 1, 2 and 3* (the “**Modified Zoning Stipulations**”).

5. Infrastructure to Kotzin and TenX sites. Sections 5(a) through 5(e) of the Prior Agreement shall be deleted and replaced with the following:

(a) Necessary Applications. Stilo shall diligently pursue all Required Approvals to provide Necessary Infrastructure to develop Kotzin and TenX as defined by Section 5(b) of this First Amendment and the Town agrees to fully cooperate in pursuit of such approvals at no out of pocket cost to the Town excepts as set forth herein.

(b) Definition of “Necessary Infrastructure”. “Necessary Infrastructure” shall mean the infrastructure needed to develop Kotzin and TenX as contemplated by the Stilo Applications, including paved access roads consisting of at least two lanes (as depicted on *Exhibits B1 and B2*) (the “**Kotzin Access**” and the “**TenX Access**,” respectively), water lines sized to provide service to the permitted uses, electrical service, telephone service, and a sanitary sewer solution involving treatment for the Stilo Properties (including the Town Housing Parcels) acceptable to the appropriate authorizing authorities. If Stilo provides other utilities to Kotzin or TenX (including, by way of example, internet service and natural gas) such additional utilities shall be included within the meaning of Necessary Infrastructure and shall be provided pursuant to Section 5(d) of this First Amendment. Stilo and the Town shall work cooperatively in order to obtain internet service to Kotzin, TenX and the Town Housing Parcels.

(c) Definition of “Required Approvals”. “Required Approvals” is defined as all permits or authorizations required to construct Necessary Infrastructure from the appropriate authorizing authorities.

(d) Infrastructure to Town Housing Parcels. Stilo shall commence the construction of the Necessary Infrastructure to Kotzin before TenX and has the right to utilize the CV Escrow Account (as defined in Section 8(c)(i)) funds for such purposes. Necessary Infrastructure specifically includes providing backbone infrastructure to the Town Housing Parcels as well as to Kotzin and TenX, none of which may be developed until the Final Approval of the Forest Service Application (as those terms are defined in Section 5(f)) for the Necessary Infrastructure is obtained. For each Town Housing Parcel through which a main road connects property not owned by the Town, Stilo will construct the Necessary Infrastructure through the Town Housing Parcel. Necessary Infrastructure does not include distribution lines or any other On-site Infrastructure to individual lots or homes on the Town Housing Parcels.

(e) U.S. Forest Service Approval. Subject to Stilo's funding obligation set forth below, the Town shall act as the applicant for the U.S. Forest Service's approval of Necessary Infrastructure ("**Forest Service Application**"). The Town shall use reasonable efforts to expedite U.S. Forest Service review and, in good faith, complete all matters set forth on *Exhibit 4* subject to Stilo's direction and prior review and approval; provided however that Stilo's direction, review and approval is subject to the limitation that such direction, review and approval must not result in the Town's inability to use the Town Housing Parcels in a manner consistent with this First Amendment and may not cause the Town to fail to satisfy its obligation to obtain initial Forest Service approval on or before the deadline established pursuant to Section 5(e)(iii) below. The parties agree that Stilo may disapprove any action or inaction by the Town (not directed by the U.S. Forest Service as permitted by *Exhibit 4*) that will result in Stilo's inability to use its property in a manner consistent with Stilo's Vesting Zoning, as that term is defined in Section 9(a) of this First Amendment. The preparation of the Forest Service Application, contractor selections, completion of resource studies and negotiation of mitigation and/or conservation measures and financial assurance shall all be Stilo's responsibility. All of the rights of Stilo set forth above in this Section 5(e) shall be subject to Stilo's funding obligations as set forth below.

(i) Stilo shall fund the costs for submittal and processing the Forest Service Application subject to a budget estimated at Six Hundred Thousand and No/100 Dollars (\$600,000.00), which may be modified subject to mutual agreement of the parties. In addition, Stilo shall reimburse the Town for all reasonable direct expenses incurred by the Town for internal staff time and external service providers in excess of One Hundred Thousand and No/100 (\$100,000.00). The Town and Stilo shall, on a pro-rata basis, share in the direct expenses incurred by the Town up to the \$100,000 contribution limit.

(ii) If the approval of the Forest Service Application is administratively or judicially appealed, the Town shall seek to intervene in the proceedings utilizing counsel selected by Stilo and approved by the Town, which approval shall not be unreasonably withheld, conditioned or delayed, at Stilo's cost. In addition, the Town will support Stilo in any independent attempt to intervene in any such proceedings.

(iii) If the Town has not obtained initial approval of the Forest Service Application by the U.S. Forest Service deciding officer within four (4) years of the Effective Date of this First Amendment and Stilo has not been the direct cause of the failure to obtain said

approval or otherwise failed to meet its funding obligations set forth above, Stilo shall have the right but not the obligation to take full control of the permitting process. If Stilo elects to do so, the Town shall promptly cooperate to effectuate the transfer of the Forest Service Application as directed by Stilo.

(f) Maintenance of Necessary Infrastructure. Upon completion of construction, the Necessary Infrastructure shall be maintained by Stilo, its assignee, master property association or other improvement district that may be formed for such purpose in accordance with the requirements of the Final Approval of the Forest Service Application. For purposes of this Agreement, "**Final Approval**" shall mean a final and effective decision notice or record of decision issued by the U.S. Forest Service approving a right of way or easement appropriate to accommodate the Necessary Infrastructure with respect to which any administrative appeals have been completed and determined by the agency reviewing officer and there are no judicial challenges pending in which a preliminary injunction or similar interim relief preventing use of the authorized federal land for its intended purposes by Stilo and the Town is being sought.

6. **Permanent Housing on Stilo Parcels.** Section 6(c) of the Prior Agreement shall be deleted and replaced with the following:

(c) Housing Construction Types. Stilo will offer multi-family dwelling units, traditional single family units and alternative single family units. If offered, modular housing will include permanent foundations, nonmetal exterior siding, and pitched roofing. The definitions for the terms "multi-family dwelling units", "traditional single family units" and "alternative single family units" are set forth in the narratives of Stilo's Application submitted on August 4, 2011 and approved on November 2, 2011 for the Stilo Parcels, as modified by the Final Town Approval.

7. **Transfer of Parcels to Town for Housing.** Section 7 of the Prior Agreement shall be deleted in its entirety and replaced with the following:

(a) Transfer of Forty Acres to Town for Housing. In order to induce the Town to enter into the Prior Agreement (including the annexation of TenX and the approval of zoning of the Stilo Parcels) and this First Amendment and in order to assist the Parties in meeting the housing needs of the community, Stilo has designated forty (40) acres to be transferred in fee simple ownership to the Town for the purpose of providing housing and employment opportunities within the Town. The First Town Housing Parcel and the Second Town Housing Parcel (as defined herein) shall collectively be referred to as the "**Town Housing Parcels.**"

(i) Upon execution and delivery of this First Amendment, Stilo shall execute and deliver to Stewart Title (the "**Escrow Agent**") a deed and instructions for the delivery thereof (the "**Escrow Instructions**") for a twenty (20) acre parcel at Kotzin (the "**First Town Housing Parcel**") depicted as "Town Parcel (R1)" on *Exhibit B1*. The Escrow Instructions shall specify that the deed will be delivered to the Town upon the execution and delivery of this First Amendment and the occurrence of all the conditions precedent set forth therein.

(ii) Stilo agrees to transfer a second twenty (20) acre parcel to the Town (the "**Second Town Housing Parcel**") as and when required pursuant to Section 7(g) of this First Amendment. The parties agree that the Second Town Housing Parcel shall be located either at TenX or, in the alternative, at Kotzin, as set forth in Section 7(g) of this First Amendment. The Second Town Housing Parcel, if located at TenX, is depicted as "Town Parcel (SFR2)" on *Exhibit B2* or, if located at Kotzin, is depicted as "R2" on *Exhibit B1*.

(iii) Upon the delivery of the deed for the Second Town Housing Parcel at either Kotzin or TenX, the parties shall direct the Escrow Agent to terminate the Escrow Instructions for the non-selected Town Housing Parcel.

(b) Deed Restrictions. The Town Housing Parcels shall be transferred by Stilo without any cost to the Town, and will be deed restricted in perpetuity for use as public housing or other public purposes. "Other public purposes" shall mean use as a park or other Town facility and may include the transfer of any or all of the Town Housing Parcels to a Town Housing Authority (defined below).

(c) Covenants, Conditions, and Restrictions. Housing offered on the Town Housing Parcels shall be subject to neighborhood covenants, conditions, and restrictions typical of similar neighborhood subdivisions in other parts of Coconino County.

(d) Local Workforce Housing. It is the intent of the parties that housing on the Town Housing Parcels is for use by the local workforce, especially residents unable to afford market rate rental or ownership housing. The Town intends that housing on its parcels be available at a price that is lower than, and does not compete with, housing on the Stilo parcels.

(e) Formation of a Town Housing Authority. If the Town elects to form a municipal housing authority ("Town Housing Authority"), as

defined in A.R.S. § 36-1401, in order to allow the Town to finance, construct, and develop additional housing, Stilo agrees, at no out of pocket cost to Stilo, to assist the Town in forming the Town Housing Authority so long as the Town Housing Authority does not directly impair, impede or compete with Stilo's efforts to pursue the Required Approvals.

(f) Provision of Infrastructure to Town Housing Parcels. Except as otherwise set forth in Section 7 (i), Stilo shall provide infrastructure to the Stilo Parcels and the Town Housing Parcels as provided in Section 5, above.

(g) Escrow Instructions and Location of the Second Town Housing Parcel. Also upon execution and delivery of this First Amendment, Stilo shall execute and deliver to Escrow Agent two (2) fully executed deeds and accompanying Escrow Instructions in the form of *Exhibit 5* for the Town's acquisition of the Second Town Housing Parcel.

(i) The deed for the Second Town Housing Parcel shall be delivered upon the Town's selection of the location for the Second Town Housing Parcel which shall not occur until at least ten (10) acres of the First Town Housing parcel have been developed and constructed for use as residential housing (the "**Ten Acre Milestone**").

(ii) The Town may select the location of the Second Town Housing Parcel at Kotzin, if at the Ten Acre Milestone, Stilo has not commenced construction of the Necessary Infrastructure to TenX pursuant to construction contracts that include reasonable substantial completion dates and performance and payment bonds have been posted by the contractors. If the Town elects the Second Town Housing Parcel in Kotzin, the Town Housing Parcels will be Parcels "(R1)" and "(R2)" respectively on *Exhibit B1*, and the alternative land use plan and data table for TenX set forth on *Exhibit B2* shall become effective.

(iii) The Town shall select the location of the Second Town Housing Parcel at TenX if, at the Ten Acre Milestone, Stilo has constructed an Initial Subdivision at TenX.

(h) Potential Construction of Town Housing by Stilo. The Town and Stilo will consider an arrangement whereby Stilo constructs housing on the Town Housing Parcels. In such an event, Stilo will be reimbursed for the cost of on-site development and construction and other necessary and reasonable costs associated therewith (the "**Town Housing Costs**"). If the Town fails to reimburse Stilo for such Town Housing Costs within twelve (12) months of completion of the housing and receipt of a documented

invoice for such costs, the Town shall pay Stilo interest on such costs. The Parties will negotiate an interest rate.

(i) Potential Construction of Necessary Infrastructure by the Town. If the construction of Necessary Infrastructure for access to Kotzin has not commenced within the "**Kotzin Access Construction Period**" defined in Section 7(i) below pursuant to construction contracts that include reasonable substantial completion dates and performance and payment bonds to be posted by the contractors, and the Town is ready and willing to commence construction for access to the First Town Housing Parcel, the Town may proceed to construct the infrastructure for the level of service needed to support residential development on the First Town Housing Parcel. If the Town elects to commence construction and Stilo immediately funds all costs associated with upsizing for construction of the Necessary Infrastructure, the Town shall construct the Necessary Infrastructure subject to the reimbursement provisions and other remedies set forth below.

(i) The "**Kotzin Access Construction Period**" shall mean that period ending eight (8) months after Final Approval of the Forest Service Application, provided that such period may be extended up to (2) additional months if Stilo requests such extension on or before six (6) months after the Final Approval and demonstrates to the reasonable satisfaction of the Town that Stilo has substantially obtained all Required Approvals for the construction of Necessary Infrastructure to Kotzin.

(ii) If the Town elects to proceed with construction of infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel, and if Limited Commercial Development of Camper Village (as defined in Section 8(c)(iv) below) has not occurred at the time of such Town election, Stilo shall have the right, but not the obligation, to post a bond in an amount equal to the estimated construction cost of such construction (plus a ten percent (10%) contingency) (the "**Infrastructure Construction Financial Assurance**") which shall be determined by a mutually acceptable professional engineering firm (the "**Engineer's Estimate**"). The Town must utilize the Infrastructure Construction Financial Assurance for construction of the infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel.

(iii) If the Town elects to proceed with construction of infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel, and if Limited Commercial Development of Camper Village (as defined in Section 8(c)(iv) below) has occurred at the time of such election, then Stilo shall provide the Infrastructure Construction Financial Assurance, and any

available funds from the CV Financial Assurance (as defined in Section 8(c)(i) below) shall be used to offset the amount of the Infrastructure Construction Financial Assurance. The Town must utilize the Infrastructure Construction Financial Assurance and the CV Financial Assurance for construction of the infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel.

(iv) If (A) Stilo has posted the Infrastructure Construction Financial Assurance and (B) the Town has constructed infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel, then if and when Stilo develops either Kotzin or TenX, before Stilo is issued its first building permit for such development on either Kotzin or TenX, Stilo must fully reimburse the Town the paid and accrued cost of all maintenance and repair of such infrastructure as of the date of such reimbursement.

(v) If (A) Stilo has not posted the Infrastructure Construction Financial Assurance and (B) the Town has constructed infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel, then if and when Stilo develops either Kotzin or TenX, before Stilo is issued its first building permit for such development on either Kotzin or TenX, Stilo must fully reimburse the Town the entire cost of the Town's constructed infrastructure and the paid and accrued cost of maintenance and repair of such infrastructure as of the date of reimbursement plus One Million Five Hundred and No/100 (\$1,500,000).

(vi) If (A) Stilo has not commenced development of the Necessary Infrastructure to Kotzin or TenX, (B) Stilo has not elected to post the Infrastructure Construction Financial Assurance, (C) the Town has constructed infrastructure for the level of service needed to support Town residential development on the First Town Housing Parcel, and (D) Stilo has not fully reimbursed as required by Section 7(i)(v) within ten (10) years following the U.S. Forest Service Final Approval (the "**Ten Year Milestone**"), Stilo shall be required to convey an additional ten (10) acres of land immediately adjacent to the First Town Housing Parcel to the Town for housing (the "**Additional Housing Parcel**") subject to the applicable deed restrictions for the other Town Housing Parcels. Upon execution and delivery of this First Amendment, Stilo shall execute and deliver to Escrow Agent one fully executed deed and accompanying Escrow Instructions in the form attached hereto as *Exhibit 6*.

8. **Interim Housing at Camper Village.** Section 8 of the Prior Agreement shall be deleted in its entirety and replaced with the following:

(a) Zoning for Temporary Homes at CV. The PCD zoning at CV allows for up to thirty-three (33) temporary homes to be installed on a site plan prepared by Stilo and subject to review and approval by the Town at the time that the site plan required by Section 8(c)(ii) of this First Amendment is submitted. Such review and approval by the Town shall not be unreasonably withheld. The installation of no more than sixteen (16) temporary homes shall be required. Stilo shall have the right, but not the obligation, to construct up to thirty-three (33) temporary homes if market conditions warrant and the backbone infrastructure constructed for the sixteen (16) temporary homes is sufficient to meet the further demand. The installed units may be a mixture of "double wide" and single wide" units and shall be installed in accordance with the site plan that is subject to the review and approval of the Town pursuant to this Section 8(a). In light of the temporary nature of the temporary housing, the site plan shall include minimal infrastructure improvements: specifically, gravel roads, minimal landscaping and no re-grading of the site but shall be subject to applicable regulatory requirements. As of the Effective Date of this First Amendment, the parties acknowledge that six (6) of the required sixteen (16) units have been installed on spaces occupied by lessees and four (4) additional spaces are committed pending permitting approvals.

(b) Installation of Homes. The temporary homes installed shall be available for lease or purchase and, in either case, a separate lease shall be provided for the real property upon which the temporary homes are located. A minimum term of two (2) years on all leases for the temporary homes and associated real property shall each be offered to prospective lessees. Stilo shall respond to the demand for the units and provide an appropriate mix of "double wide" and "single wide" units. If the Town is able to secure financial assistance from private, third parties to establish a program to assist individuals with purchasing either interim or permanent housing units, Stilo shall provide matching funds in an amount equal to the amount contributed by such private, third parties. Such funds (provided by private, third parties and by Stilo) may only be used to provide financial assistance to qualifying individuals desiring to purchase housing units.

(c) Transition of CV to Commercial Uses. The parties intend CV to ultimately become a commercial/mixed use site, and the PCD zoning application reflects this long-term plan. Subject to conditions set forth below, the owner of Camper Village (the "**CV Owner**") or an affiliate of the CV Owner shall have the right, but not the obligation, to construct Limited Commercial Development (as defined below) at CV during the "**Camper Village Limited Commercial Development Period**" (as defined below). At the point at which housing (other than housing on the Town Housing Parcels) becomes available at Kotzin or TenX, Stilo shall

phase out the temporary housing at CV which is required by this First Amendment and shall provide relocation assistance for owners of Interim Housing provided pursuant to this Section 8 to either a Town Housing Parcel or to the Initial Subdivision (as that term is defined in Section 10(a) of this First Amendment).

(i) The CV Owner must deposit into a jointly established escrow account (the "**CV Escrow Account**") a surety bond or cash in an amount equal to the greater of Three Million and 00/100 Dollars (\$3,000,000) or two-thirds of an Engineer's Estimate as a form of financial assurance for the construction of the Necessary Infrastructure to Kotzin (the "**CV Financial Assurance**"). The CV Escrow Account instructions shall provide that interest on any deposited funds shall be paid to the CV Owner and that no withdrawals from the CV Escrow Account, other than quarterly disbursements of any interest paid to the CV Owner, may be made without the prior written approval of the Town; and

(ii) Stilo shall provide a site plan to the Town that includes sufficient residential housing needed to serve prospective employees who will work in the Limited Commercial Development ("**Camper Village Employee Housing**"). The site plan shall be subject to the reasonable approval of the Town with such approval not to be unreasonably withheld. The constructed Camper Village Employee Housing shall be in addition to the interim housing required by the Prior Agreement. Notwithstanding, Stilo shall be authorized to move the location of the temporary homes/sites established pursuant to the Prior Agreement to construct the Limited Commercial Development.

(iii) The "**Camper Village Limited Commercial Development Period**" shall commence on the Effective Date and shall terminate upon Forest Service Final Approval.

(iv) "**Limited Commercial Development**" at CV shall mean that the CV Owner or affiliate may develop CV pursuant to the CV Vested Zoning subject to the conditions set forth above. If adequate Camper Village Employee Housing is not provided, then no commercial development may occur at CV until the Initial Subdivision is established at Kotzin or TenX. If the Limited Commercial Development at CV is constructed, and if Stilo constructs the Initial Subdivision (as defined in Section 10(a)) at either Kotzin or TenX, Stilo may thereafter convert the Camper Village Employee Housing to uses permitted by the CV Vested Zoning, provided the number of dwelling units in the Camper Village Employee Housing is replaced by an equal or greater

number of dwelling units on Kotzin or TenX consistent with Stilo's Vested Zoning.

(v) An event of force majeure (as defined herein) shall have no effect on the ability to commence Limited Commercial Development subject to satisfaction of the foregoing conditions.

9. **Vesting of Zoning.** Section 9 of the Prior Agreement shall be deleted in its entirety and replaced with the following:

(a) **Vested Zoning.** Upon the execution and delivery to the Town of: this First Amendment (including the execution and delivery of the Escrow Instructions for the First Town Housing Parcel, the Second Town Housing Parcel and the Additional Housing Parcel) zoning at all Stilo Parcels shall be considered fully "vested" (the "**Vested Zoning**"). Stilo's agreement to transfer forty (40) acres of land and the contingent obligation to transfer the Additional Housing Parcel to the Town is being made in furtherance of the long term development plans of the Town and for Stilo's Properties pursuant to the zoning approvals granted by the Town, and in order to commence implementation of the mixed housing goals, including both public and private housing, as documented in the Prior Agreement and this First Amendment. The transfer of forty (40) acres to the Town and the contingent obligation to transfer the Additional Housing Parcel to the Town is, therefore, a critical act of reliance by both Stilo and the Town and Stilo acknowledges that such transfer is not an exaction as that term is used in A.R.S. § 9-500.12. The parties expressly acknowledge this critical reliance is in furtherance of the long term goals of both the Town and Stilo to implement the development plans and zoning approved by the Town on November 2, 2011.

(b) **Future Modifications.** The parties acknowledge that the common law rules of vested rights shall apply to Stilo's Properties, provided that conditions in 9(a). Thereafter, Stilo's Properties shall be "**Irrevocably Vested**" and, for purposes herein, "Irrevocably Vested" means that Stilo shall have the right to develop Kotzin, TenX and Camper Village pursuant to the zoning approvals and the Town's ordinances and regulations as of the Effective Date. The Town may amend or adopt new generally applicable ordinances, rules, regulations or standards as set forth below (collectively, the "**Permissible Amendments**") but shall not otherwise modify Stilo's zoning approvals or otherwise impact the density, intensity, land uses, building height or floor area ratios on the Stilo Parcels without Stilo's express written consent. To the extent Stilo agrees, the modified or adopted ordinance, rule, regulations or standard shall be applied in the most minimal and least intrusive manner which is practicable under the circumstances. The following changes may be made and will apply to the Stilo Properties without Stilo's express consent:

(i) Future, landscaping and aesthetic design standards which are applicable to the entire Town.

(ii) Future land use ordinances, rules, regulations, permit requirements, design standards, and other requirements and official policies of the Town enacted as necessary to comply with mandatory requirements imposed on the Town in accordance with generally applicable county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the Town, provided that in the event any such mandatory requirement prevents or precludes compliance with this First Amendment, if permitted by law, such affected provision of this First Amendment shall be modified as may be necessary to achieve minimum permissible compliance with such mandatory requirements.

(iii) Future development fees authorized pursuant to A.R.S. § 9463.05, as may be amended.

(iv) Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety-related codes, such as the Uniform Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Conference of Building Officials, or by the county, state or federal governments.

(v) Rezoning of the Additional Housing Parcel.

(c) A.R.S. § 12-1134. From and after the date of Final Town Approval, any changes to the Vested Zoning other than those set forth above as approved by Stilo in writing, may give rise to claims under ARS § 12-1134. The parties acknowledge and agree that the document captioned "Consent to Conditions/Waiver for Diminution of Value" executed by Stilo on December 20, 2012 is hereby terminated and Stilo shall be authorized to record a notice of termination of same. Thereafter, Stilo shall then be obligated to execute and record a new waiver in the form set forth in *Exhibit 7* attached hereto.

10. Performance Benchmarks. Section 10 of the Prior Agreement shall be deleted in its entirety and replaced with the following:

(a) No Commercial Development Prior to Housing. Except as otherwise set forth in Section 8, Stilo may not obtain a certificate of occupancy for commercial development at any of the Stilo Parcels prior to housing (other than housing provided on the Town Housing Parcels) being

available at either Kotzin or TenX. For these purposes "housing being available" means that a subdivision has been platted with at least twenty-five (25) lots for sale to the public (the "**Initial Subdivision**") in either Kotzin or TenX; Necessary Infrastructure to the Initial Subdivision has been installed; and building permits have been obtained for at least five (5) single family homes and homes are built and suitable for occupancy.

(b) Additional Subdivisions. Within six (6) months following the point that building permits for single family homes have been issued for seventy-five percent (75%) of the lots in the Initial Subdivision, Stilo or an assignee of Stilo shall establish an additional subdivision on either TenX or Kotzin with at least twenty-five (25) lots for single family homes together with the Necessary Infrastructure to such subdivision with at least two (2) model homes for the subdivision until seventy-five percent (75%) build out. Thereafter, additional subdivisions for single-family homes shall be established as and when building permits for single-family homes have been issued for seventy-five percent (75%) of the lots of the current subdivision and each such subdivision shall include at least two (2) model homes until seventy-five percent (75%) build out.

(c) Timing of Construction. Stilo shall take reasonable steps to obtain the Required Approvals for the Necessary Infrastructure to Kotzin and TenX so that building permits have been issued for the construction of the Necessary Infrastructure for the development of housing at either Kotzin or TenX no later than the Kotzin Access Construction Period.

11. Water and Wastewater. Section 11(a) and 11 (b) of the Prior Agreement shall be deleted and replaced with the following:

(a) Water Supply for Kotzin and TenX. It is Stilo's responsibility to develop a water distribution system that will serve Kotzin and TenX as required and pursuant to the terms of this Section 11. Stilo shall cause an affiliate of Stilo ("**Stilo Water Affiliate**") to reapply for a certificate of convenience and necessity ("**CC&N**") to develop a water distribution system to supply water to Kotzin and TenX, either through new wells or other sources. If a CC&N is issued to the Stilo Water Affiliate within thirty (30) days following the issuance to the Stilo Water Affiliate of such CC&N, Stilo shall cause the Stilo Water Affiliate to enter into a right of first offer agreement with the Town concerning improvements undertaken by Stilo to provide water under the authority of the CC&N. The right of first offer agreement shall require the Stilo Water Affiliate to sell the improvements undertaken by Stilo to the third party on the financial terms offered to the Town if the Town fails to accept an offer extended pursuant to the right of first offer agreement required by this Section 11(a). If the Stilo Water Affiliate is unable to obtain a CC&N, after making good faith efforts to do so, the Parties agree to negotiate an agreement with the third party that obtains the CC&N requiring the supply of water to serve Kotzin

and TenX and to provide the Town a comparable right of first offer as set forth above. As condition to Town approval of any site plan or plat concerning Kotzin and TenX, Stilo must demonstrate that the property that is the subject of the site plan or plat will be served sufficient groundwater, surface water or effluent of adequate quality continuously, legally and physically to satisfy the water needs of the proposed use of the subject property for at least one hundred (100) years. For the purposes of this Section 11(a), a person or entity satisfies the definition of an "affiliate of Stilo" if the person or entity is under the control of Stilo in order to allow Stilo to discharge its obligations under this First Amendment.

(b) Wastewater Treatment at Kotzin and TenX. Wastewater treatment at Kotzin and TenX shall be provided in accordance with all applicable laws and regulations. This may be done through the South Grand Canyon Sanitary District or by construction of new treatment plants by Stilo.

12. Force Majeure. Section 20 (a) of the Prior Agreement shall be deleted and replaced with the following:

(a) Failure in performance by any party hereunder shall not be deemed an event of default, and the nonoccurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or nonoccurrence is not due to a party's action or failure to act and is due to the following whether or not foreseeable: war; insurrection; terrorism; strikes; lock-outs; riots; unusually severe weather; floods; earthquakes; fires, casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargos; changes in law, governmental action, inaction or restrictions, and temporary or permanent injunction or other reasonable events which need not be similar beyond the control of the parties.

(b) This Section 12 shall not apply to the following provisions of this First Amendment: Section 7(i) and Section 8(c).

13. Status Updates. The Town and Stilo shall provide each other monthly written reports regarding the status of obtaining Required Approvals and the development of the Stilo Parcels.

14. Entire Agreement. The Prior Agreement, as modified by this First Amendment, including all revised exhibits set forth below which are incorporated herein as if fully set forth in the text, constitutes the entire understanding and agreement of the parties and hereby modifies that Prior Agreement made of record at in Coconino County, Arizona as Instrument No. 3610450 and that Memorandum of Development Agreement Exhibits also made of record as Instrument No. 3611694. This First Amendment integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements (except for the

remaining terms of the Prior Agreement) between the parties with respect to all or any part of the subject matter hereof.

Exhibit 1	Kotzin Ranch Modified Zoning Stipulations		
Exhibit 2	TenX Ranch Modified Zoning Stipulations		
Exhibit 3	Camper Village Modified Zoning Stipulations		
Exhibit 4	Forest Service Application Requirements		
Exhibit 5	Escrow Instructions and Form of Deeds for Second Town Housing Parcel		
Exhibit 6	Escrow Instructions and Form of Deed for Additional Housing Parcel		
Exhibit 7	Exhibit 8	Form of Consent to Conditions/Waiver of	
Diminution of Value			

15. **Miscellaneous.** Except as expressly amended hereby, the Prior Agreement shall remain in full force and effect. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This First Amendment may be executed in one or more counterparts, all counterparts shall be valid and binding on the party executing them and all counterparts shall together constitute one and the same document for all purposes. This First Amendment may be executed and delivered by facsimile signature for execution on the part of one or more parties hereto and upon one party sending via facsimile to another party a facsimile copy of a signature page showing the sending party's execution or signature, the sending party shall be bound by such signature or execution.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town has caused this First Amendment to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the Town Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

THE TOWN OF TUSAYAN,
an Arizona municipal corporation

Town Clerk

By _____
Greg Bryan, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

On this _____ day of _____, 2013, before me, the undersigned officer, personally appeared Greg Bryan, who acknowledged himself to be Mayor of THE TOWN OF TUSAYAN, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

STILO DEVELOPMENT GROUP USA, L.P., an
Arizona limited partnership

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2013, before me, the undersigned officer, personally
appeared _____ who acknowledged
him/herself to be the _____ of STILO
DEVELOPMENT GROUP USA, L.P., an Arizona limited partnership, whom I know
personally/whose identity was proven to me on the oath of
_____, a credible witness by me duly sworn/whose identity
was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed
to this instrument/whose identity I verified on the basis of his/her
_____, and s/he, in such capacity, being authorized so to do,
executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Exhibit 1

KOTZIN RANCH - MODIFIED ZONING STIPULATIONS

1. Prior to the first phase of development, the Applicant must provide assurance of an adequate water supply for the entire property. Required water infrastructure to service the property shall be provided on a phased basis as development occurs. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
2. Within sixty (60) days after the Effective Date of the First Amendment to Pre-Annexation and Development Agreement between the Town of Tusayan (“**Town**”) and Stilo Development Group USA L.P. (“**Stilo**”) dated as of September __, 2013 (“**First Amendment**”), the Applicant must request annexation of the property into the SOUTH GRAND CANYON SANITARY DISTRICT for wastewater and reclaimed water service to the property. If the SOUTH GRAND CANYON SANITARY DISTRICT (THE “SGCSD”) is unable or unwilling to adequately serve the entire property with sewer service and reclaimed water service, prior to the first phase of development, the Applicant must provide an alternate means of providing permanent sewer and reclaimed water service to the property. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
3. All uses shall utilize reclaimed water for non-potable uses, such as toilet flushing, landscape irrigation, and fire protection as appropriate and available. Appropriate storage facilities must be provided to accommodate the reclaimed water requirements for the entire property on a phased basis. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
4. Prior to or concurrent with the first phase of development, the Applicant must submit a Drainage Master Plan for the entire property to address on-site and off-site drainage for the entire property, including impacts to the existing mapped floodplains on the property. The Drainage Master Plan shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
5. The access road to be provided through the Kaibab National Forest and required to develop the property pursuant to Section 5 of the First Amendment shall be maintained by Stilo, Stilo’s assignee or the master property owner association or similar improvement district, which may be formed for such purpose, at a level of service and/or condition specified by the Forest Service Final Approval, as defined by Section 5(f) of the First Amendment.

6. Prior to or concurrent with the first phase of development, the Applicant must submit a Traffic Impact Analysis (TIA) to determine the on-site and off-site roadway improvements required to serve the entire development. The TIA must be prepared by a registered traffic engineer and approved by the Town Engineer.
7. In order to ensure a mix of uses on the ground floor, a maximum of 30% of the total ground floor area can be used for hotel and conference uses within the LC1 District.
8. A comprehensive landscape inventory plan shall be submitted for the entire property prior to the first phase of development. A landscape salvage plan shall be submitted and approved by the Town on a phased basis prior to the development of each applicable phase.
9. A Cultural Resources Survey and Report shall be prepared and submitted to the Town and the State Historic Preservation Office prior to the first phase of development.
10. If any permitted land uses within the CP2 parcel include on-site parking or vehicle access, a roadway with all-weather access across the Coconino Wash shall be required.
11. Front facing garages shall be a minimum 18 feet from back of sidewalk or back of curb if no sidewalk is provided for all residential uses where parking is permitted in the driveway.
12. Concurrent with the first proposed site plan or subdivision within each of the 8 defined development parcels, a conceptual master site plan for the entire development parcel as depicted on Exhibit 6 to the zoning application narrative approved by the Town on November 2, 2011 shall be submitted if the initial site plan or subdivision does not include the entire development parcel. The conceptual master site plan shall show, at a minimum, general internal circulation routes, general parking locations, conceptual building footprints and open space locations in accordance with the approved plan. (Original Stipulation)
13. Applicant agrees to sign and record a Proposition 207 Waiver.

Exhibit 2

TENX RANCH - MODIFIED ZONING STIPULATIONS

1. Prior to the first phase of development, the Applicant must provide assurance of an adequate water supply for the entire property. Required water infrastructure to serve the property shall be provided on a phased basis as development occurs. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
2. Within sixty (60) days after the Effective Date of the First Amendment to Pre-Annexation and Development Agreement between the Town of Tusayan ("**Town**") and Stilo Development Group USA L.P. ("**Stilo**"), dated as of September __, 2013 ("**First Amendment**"), the Applicant must request annexation of the property into the South Grand Canyon Sanitary District (SGCSD) for wastewater and reclaimed water service to the property. If the SGCSD is unable or unwilling to serve the entire property with sewer service and reclaimed water service, the Applicant must provide an alternate means of providing permanent sewer and reclaimed water service to the property. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
3. All uses shall utilize reclaimed water for non-potable uses, such as toilet flushing, landscape irrigation, and fire protection as appropriate and available. Appropriate storage facilities must be provided to accommodate the reclaimed water requirements for the entire property on a phased basis. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
4. Prior to or concurrent with the first phase of development, the Applicant must submit a Drainage Master Plan for the entire property to address on-site and off-site drainage for the property, including impacts to the existing mapped floodplains on the property. The Drainage Master Plan shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
5. The access road to be provided through the Kaibab National Forest and required to develop the property pursuant to Section 5 of the First Amendment shall be maintained by Stilo, Stilo's assignee or the master property owner association or similar improvement district which may be formed for such purpose, at a level of service and/or condition specified by the Forest Service Final Approval, as defined by Section 5(f) of the First Amendment.
6. Prior to or concurrent with the first phase of development, the Applicant must submit a Traffic Impact Analysis (TIA) to determine the on-site and off-site roadway improvements required to serve the development. The TIA must be prepared by a registered traffic engineer and approved by the Town Engineer. It is desired that primary

access to the RC1 parcel be provided from FSR302 and not through the new collector roadway proposed to provide access to the residential neighborhoods within parcels MFR1 and SFR1-4. In the event that primary access to the RC1 parcel cannot be provided from FSR302, mitigation measures (e.g., provisions of directional signage to the RC1 parcel and limiting the number of driveways on the new collector roadway proposed to provide access to the residential parcels) shall be considered at the time of site plan or subdivision submittal for parcels MFR1, SFR1-4 and/or RC1.

7. A comprehensive landscape inventory plan shall be submitted for the entire property prior to the first phase of development. A landscape salvage plan shall be submitted and approved by the Town on a phased basis prior to the development of each applicable phase.
8. A Cultural Resources Survey and Report shall be prepared and submitted to the Town and the State Historic Preservation Office prior to the first phase of development.
9. Front facing garages shall be a minimum 18 feet from back of sidewalk or back of curb if no sidewalk is provided for all residential uses where parking is permitted in the driveway.
10. Concurrent with the first proposed site plan or subdivision within each of the 9 defined development parcels, a conceptual master site plan for the entire development parcel as depicted on Exhibit 6 to the zoning application narrative approved by the Town on November 2, 2011 shall be submitted if the initial site plan or subdivision does not include the entire development parcel. The conceptual master site plan shall show, at a minimum, general internal circulation routes, conceptual lotting layout, general parking locations, conceptual building footprints and open space locations as applicable in accordance with the approved plan.
11. Applicant agrees to sign and record a revised Proposition 207 Waiver.
12. Within parcel SFR1, a maximum of 32 lots are permitted to be developed as park models, and any park models must be located at the north end of the parcel in a separate subdivision from the other permitted product types.
13. Within the SRVP1 parcel, the maximum number of recreational vehicle spaces shall not exceed 248, or 10 spaces per gross acre. The maximum duration of stay shall not exceed 180 days.

Exhibit 3

CAMPER VILLAGE - MODIFIED ZONING STIPULATIONS

1. "Limited Commercial Development" at camper village, shall not commence until the conditions of Section 8(c) of the First Amendment to Pre-Annexation and Development Agreement between the Town of Tusayan ("Town") and Stilo Development Group USA L.P. ("Stilo"), dated as of September __, 2013 ("**First Amendment**") are fully satisfied.
 - a. A site plan as required by Section 8(a) of the First Amendment, including sufficient Camper Village employee housing, as defined by Section 8(c)(ii) of the First Amendment.
2. If the current water service provider (Tusayan Water Development Association or its successor) is unable or unwilling to adequately serve the development for any reason, prior to the first phase of the development pursuant to Section 8(c) or 10(a) of the First Amendment (the "**CV Phase I Development**"), the Applicant must provide assurance of an adequate water supply to serve the entire property. Required water infrastructure to serve the property shall be provided on a phased basis as development occurs. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies
3. If the current wastewater service provider (South Grand Canyon Sanitary District) is unable or unwilling to adequately serve the entire development with sewer service and/or reclaimed water service for any reason, prior to the CV Phase I Development, the Applicant must provide an alternate means of providing permanent sewer and reclaimed water service to the property. All required engineering reports and improvement plans shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
4. Prior to or concurrent with the CV Phase I Development, the Applicant must submit a Drainage Master Plan for the entire property to address on-site and off-site drainage for the property, including impacts to the existing mapped floodplains on the property. The Drainage Master Plan shall be reviewed and approved by the Town Engineer and applicable regulatory agencies.
5. Prior to or concurrent with the CV Phase I Development, the Applicant must submit a Traffic Impact Analysis ("**TIA**") to determine the on-site and off-site roadway improvements required to serve the development. All required rights-of-way and/or access easements must be dedicated at the time of development. The TIA must be prepared by a registered traffic engineer and approved by the Town Engineer.
6. *Exhibit E* to the Pre-Annexation and Agreement between the Town and Stilo, dated as of July 1, 2011 shall be amended at the time that the site plan required by Section 8(a) of the

First Amendment is approved so that the site plan shows a second point of legal access to the property from a publicly dedicated right of way.

7. In order to ensure a mix of uses on the ground floor, a maximum of 30% of the total ground floor area can be used for hotel and conference uses.
8. Any land donated to the Town shall not be located in the floodplain or floodway.
9. All uses shall utilize reclaimed water for non-potable uses, such as toilet flushing, landscape irrigation, and fire protection. Appropriate storage facilities must be provided to accommodate the reclaimed water requirements.
10. The temporary housing provisions shall include, at a minimum the standards set forth in the zoning application narrative approved by the Town on November 2, 2011, plus gravel roads, minimal landscaping, and compliance with all the regulatory agencies including Arizona Department of Environmental Quality, Northern Arizona Council of Governments, Coconino County Flood Control District, and any other applicable regulatory agencies.
11. A comprehensive landscape inventory plan shall be submitted for the entire property prior to the CV Phase I Development. A landscape salvage plan shall be submitted and approved by the Town on a phased basis prior to the development of each applicable phase.
12. Applicant agrees to sign and record a Proposition 207 Waiver.
13. Concurrent with the CV Phase I Development, a detailed conceptual master site plan for the entire property shall be submitted. The plan shall be in substantial conformance with with the site plan approved pursuant to Section 8(a) of the First Amendment. The conceptual master site plan shall show, at a minimum, general internal circulation routes, general parking locations, conceptual building footprints and open space location in accordance with the approved plan.
14. The existing RV Park use on the property shall be terminated at the time development plans are approved and construction commences for the CV Phase I Development.

Exhibit 4

FOREST SERVICE APPLICATION REQUIREMENTS

The Town agrees to timely complete the following items as applicant to the U.S. Forest Service for the use of federal land necessary for the construction, operation and maintenance of the Necessary Infrastructure, subject in all cases to (i) Stilo's prior review and approval pursuant to Section 5 of the First Amendment and (ii) Stilo's funding obligations as set forth in Section 5 of the First Amendment, (iii) Stilo's duty to fund any amounts required by any of the following:

- (a) submit the Forest Service Application and make any necessary modifications thereto as directed by the U.S. Forest Service;
- (b) enter into and adhere to the terms of any U.S. Forest Service required collection agreement for the U.S. Forest Service's cost recovery related to the Forest Service's processing of the Forest Service Application.
- (c) enter into and adhere to the terms of any required coordination agreement with the Forest Service for the undertaking of the analysis required pursuant to the National Environmental Policy Act ("**NEPA**");
- (d) work cooperatively with the Forest Service to develop proposal content and evaluation/selection criteria for third party contractor selection for purposes of assisting the Forest Service in completing required NEPA analysis and, upon selection, enter into and adhere to the terms of a third party contractor service agreement;
- (e) if necessary enter into and adhere to contracts with outside service providers to obtain necessary baseline data or other analysis needed to support the U.S. Forest Service's NEPA analysis or other evaluations required pursuant to the National Historic Preservation Act ("**NHPA**");
- (f) promptly advise Stilo of any written communication from the Forest Service or other cooperating agencies (including, but not limited to meeting and/or information requests) and attend all meetings requested by the Forest Service;
- (g) provide Stilo with advance notice of and an opportunity to participate in and/or attend any teleconference or meeting with the Forest Service and/or any cooperating agency representatives;
- (h) notify Stilo of any public information requests received by the Town and/or any Freedom of Information Act ("**FOIA**") requests received by the Forest Service and coordinate any response thereto including, to the extent permitted by law, honoring any request by Stilo to withhold confidential information;
- (i) timely submit written comments in support of the Forest Service Application during public scoping and any public comment period applicable to draft NEPA analysis; and

- (j) timely approve and execute the terms of the Forest Service authorization for use of federal land (e.g., easement, right of way, special use permit) for the construction, operation and maintenance of the Necessary Infrastructure.

Exhibit 5

**ESCROW INSTRUCTIONS AND FORM OF DEED FOR SECOND TOWN
HOUSING PARCEL**

This Escrow Agreement (the "**Agreement**") is made as of _____, 2013 by and among the Town of Tusayan, an Arizona municipal corporation (the "**Town**"), Stilo Development Group USA Limited Partnership., an Arizona limited partnership ("**Stilo**") and Stewart Title Company, a _____ corporation ("**Stewart Title**").

RECITALS

A. The Town and Stilo are party to that certain Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, dated July 1, 2011 and recorded November 9, 2011 as instrument number 3610450, Records of Coconino County, Arizona, the associated Memorandum of Development Agreement Exhibits dated November 17, 2011 and recorded November 23, 2011 as instrument number 3611694, Records of Coconino County, Arizona as amended by that First Amendment dated _____, 2013 and recorded _____ as instrument number _____ in the Records of Coconino County, Arizona (the "**First Amendment**" and collectively the "**Development Agreement**").

B. Among the parcels of real property subject to the Development Agreement are the following Coconino County tax parcels:

502-16-006 (the "**Kotzin Property**") as depicted on Exhibit A; and

502-14-001 (the "**TenX Property**") as depicted on Exhibit B.

C. Stilo owns the Kotzin Parcel and the TenX Parcel.

D. Pursuant to Section 7(g) of the First Amendment, Stilo is obligated to transfer title either to twenty (20) acres of the Kotzin Property (the "**Kotzin Second Town Housing Parcel**") or twenty (20) acres of the TenX Property (the "**TenX Second Town Housing Parcel**") to the Town for no monetary consideration. The obligation of Stilo to transfer to the Town either the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel is irrevocable. Section 7(g) of the First Amendment establishes certain conditions which establish which of the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel is to be transferred. Those conditions are set forth in Section 9 of this Agreement.

E. The precise legal description of the Kotzin Second Town Housing Parcel is unknown but is generally depicted at Exhibit C.

F. The precise legal description of the TenX Second Town Housing Parcel is unknown but is generally depicted at Exhibit D.

G. Stilo has established an escrow account (No. 11450318) (the “**Escrow**”) at Stewart Title to irrevocably transfer title to either the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel to the Town pursuant to this Agreement.

H. The Development Agreement was determined to be a legislative act pursuant to stipulation in the matter of *Stilo Development Group USA, LP, et al. v. Town of Tusayan, et al.*, Case No. CV2012-00080, Coconino County Superior Court.

I. This Agreement implements the Development Agreement and unless otherwise defined, capitalized terms used herein shall have the meaning set forth in the Development Agreement.

A G R E E M E N T S

1. Recitals as Agreements. The foregoing Recitals are true and correct and are incorporated herein as agreements.

2. Irrevocability. This Agreement and the Escrow become irrevocable upon delivery of a fully signed copy of this Agreement to Stewart Title. This Agreement and the Escrow shall remain irrevocable and in full force and effect until Closing.

3. Deeds for Transfer of the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel. Transfer of fee simple title to the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel shall be pursuant to deeds in the forms attached as Exhibit C or Exhibit D respectively (collectively, the “**Deeds**”), fully signed originals of which shall be deposited with Stewart Title contemporaneously with the delivery into Escrow of a fully signed copy of this Agreement. Stilo hereby irrevocably delivers the Deeds to Security Title to be held in trust for the benefit of the Town pursuant to the terms of this Agreement. The legal descriptions to be attached to each Deed contemporaneously with the delivery of a fully signed copy of this Agreement into Escrow on the Effective Date of the First Amendment are described on Exhibit C (in the case of the Kotzin Second Town Housing Parcel) and on Exhibit D (in the case of the TenX Second Town Housing Parcel). Prior to the Closing Date, the legal descriptions shall be replaced with updated legal descriptions pursuant to Section 4.c of this Agreement.

4. Conditions Precedent to the Transfers of the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel.

a. Title Commitment. Within ten (10) days after Town’s delivery of a declaration that it has reached the Ten Acre Milestone (as defined in Section 7 (g)(i) of the First Amendment) which shall include the Town’s selection of the location of the Second Town Housing Parcel (the “**Town Declaration**”), Stilo’s shall cause Stewart Title to deliver to the Town and to Stilo an Arizona form title commitment (“**Title Commitment**”) for the relevant property together with copies of all documents and other items referred to in the Title Commitment as exceptions. The Title Commitment shall be for an extended owner’s policy of title insurance (“**Title Policy**”) in an amount to be agreed upon by the parties not later than ten (10) days prior to the Closing Date (as that date is determined pursuant to Section 9 of this Agreement).

b. Title Review. The Town shall have forty-five (45) days to examine the Title Commitment and to specify to Stilo in writing those items reflected therein that the Town will accept subject to (the "**Permitted Encumbrances**") and those matters reflected in the Title Commitment that the Town finds objectionable. The Town need not object to any monetary encumbrances, which Stilo agrees to remove at or prior to the Closing Date. If the Town makes any such written objection, Stilo shall have until the Closing Date to use its good faith efforts to cure such objections and have the Title Commitment updated to reflect such cure; provided, however, that Stilo shall have no obligation to spend more than \$3,500 (the "**Maximum Cure Amount**") to affect such cure. The Maximum Cure Amount shall not limit Stilo's obligation to remove monetary encumbrances. If Stilo anticipates that the Maximum Cure Amount will be exceeded, Stilo shall notify the Town and within thirty (30) days thereafter the Town and Stilo shall mutually agree upon a substitute twenty (20) acre parcel to replace the parcel that is the subject of the objection for which the Maximum Cure Amount will be exceeded. The Town and Stilo shall continue this process until a replacement parcel can be identified. If a replacement parcel cannot be identified for which a Town objection can be cured at cost less than the Maximum Cure Amount, Stilo must cure the Town's objection for the replacement parcel for which the lowest amount must be expended to cure the Town's objection. If the Town's objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement. If the Town fails to give written notice to Stilo of any objections during the sixty (60) day review period, it shall be deemed that all exceptions shown in the Title Commitment are acceptable, and all such exceptions shall be Permitted Encumbrances.

c. Survey. Within ten (10) days after the Effective Date of the First Amendment, Stilo shall provide to the Town and Stewart Title a Record of Survey by Woodson Engineering and Surveying Co., Inc. (Project No. - 113672) stamped 1/15/2013 ("**Survey**") that provides legal descriptions for the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel. The surveyor shall be instructed to stake each of the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel. The Survey and updated legal descriptions shall be submitted to the Town and to the Bureau of Land Management ("**BLM**") for approval. Within three (3) Business Days (defined below) of its receipt of the BLM approved Survey, Stilo shall provide a copy thereof to the Town and, upon such receipt, the Town shall have sixty (60) days to examine the Survey with regard to the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel and to specify to Stilo in writing those items reflected thereon that the Town finds objectionable. If the Town makes any such written objection, Stilo and the Town shall jointly work in good faith with the surveyor to resolve the Town's objections but Stilo shall not be required to spend more than the Maximum Cure Amount to resolve any of the Town's objections to the Survey and to the condition of title, taken jointly, subject to Stilo's obligation to identify a replacement parcel that is acceptable to the Town in accordance with a process consistent with the review and approval process set forth in Section 4.b above. Should the parties be unable to resolve any of the Town's objections, the dispute will be resolved in the manner set forth in the Development Agreement. Upon the passage of the Town's sixty (60) day examination

and objection period without Stilo's receipt of any written objections, or upon the resolution of such objections, the Survey, as revised if necessary, shall be delivered to Stewart Title.

d. Amendment to Title Commitment. Within thirty (30) days after the Effective Date of the First Amendment, Stewart Title shall amend the Title Commitment ("**Amended Title Commitment**") to include the update legal descriptions described in the Survey and shall deliver such amendment to the parties. Upon receipt of the Amended Title Commitment, the Town shall have the right to review and approve the Amended Title Commitment pursuant to a process consistent with the review and approval process set forth in Section 4.b above.

e. Environmental Reports. If Stilo has in its possession a Phase I environmental assessment report pertaining to the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel, Stilo shall, without representation or warranty, deliver such report/s to the Town within ten (10) days after the date of the receipt of the Town's Declaration. If Stilo does not have such reports in its possession, it shall have no obligation to obtain one, unless Stilo commissioned a Phase I environmental assessment for the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel within six (6) months prior to receipt of the Town's Declaration, in which case Stilo shall cause the consultant who prepared the Phase I environmental assessment to provide Stilo and the Town such assessment. The Town may also (at its expense) order a Phase I environmental report and additional environmental reports if necessary for the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel. If the Town objects to any parcel based on information provided in an environmental report, the Town must provide that objection to Stilo within forty-five (45) days after the delivery of a fully signed original environmental report. Thereafter, the parties shall work in good faith to resolve the Town's objections, but Stilo shall have no financial obligation concerning the Town's objections, subject to Stilo's obligation to identify a replacement parcel that is acceptable to the Town in accordance with a process consistent with the review and approval process set forth in Section 4.b above. If the Town's objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement.

5. Inspection of the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel. At any time prior to the Closing Date, the Town shall have the right but not the obligation, at its sole cost, expense and risk, to enter upon and to examine and inspect the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel and to conduct any feasibility studies thereon that it may desire. Stilo shall be entitled to copies of all test results, inspection reports or feasibility reports generated as a result of any such study, including (without limitation) any environmental reports obtained by the Town pursuant to Section 4.e above; provided, however, that the Town does not warrant or represent the accuracy of any such items. Should the Town avail itself of the rights set forth in this Section 5, the Town shall indemnify and hold Stilo harmless to the extent permitted by law from and against any and all costs, liabilities, claims, liens, encumbrances or causes of action (including, without limitation, reasonable attorneys' fees) arising out of the Town's actions taken in conjunction with exercising

its rights under this Section 5, and such indemnification obligation shall survive the Closing Date.

6. Representations and Warranties of Stilo.

a. Except as expressly set forth herein and in the deeds applicable to a conveyed parcel, Stilo makes no representations or warranties of any kind to the Town including, without limitation, the physical condition of the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel or their suitability for any particular purpose.

b. Stilo hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement.

c. Stilo hereby warrants and represents that no real estate commission is due to be paid as a result of its involvement in this Agreement and hereby agrees to defend, indemnify and hold the Town harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel.

d. Neither the execution of this Agreement or any of the deeds described herein nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement, court order or other arrangement to which Stilo is a party or by which Stilo may be bound.

e. To Stilo's actual knowledge, there is no investigation, litigation or proceeding pending or threatened, which adversely affects any of the property described herein, Stilo's interest therein, or Stilo's ability to perform hereunder. Stilo has not received notice of and does not have any knowledge of, any pending or threatened investigation, litigation or proceeding in eminent domain, special assessment, zoning, or otherwise, which would adversely affect the property described herein.

f. To Stilo's actual knowledge, the property described herein is in compliance with all federal and state environmental laws, codes, orders, decrees, rules, regulations and ordinances and no environmental pollutant has been stored or exists in, on, under or around the property described herein. No environmental legal action exists nor, to Stilo's actual knowledge, is there a basis for such an action with respect to the property. Without limiting the foregoing, for purposes of this Agreement, "**Environmental Pollutant**" shall mean any substances, wastes, pollutants, chemicals, compounds, mixtures or contaminants now or hereafter included within those respective terms under any now existing or hereafter or amended federal, state or local statute, ordinance, code or regulation which, due to its characteristics or interaction with one or more other substances, wastes, chemicals, compounds, mixtures or contaminants, damages or threatens to damage health, safety, or the environment and is required to be remediated by any law applicable to the property described herein, including (without limitation):

The Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §6901 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. §9601 *et seq.*) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. §2601 *et seq.*), the Emergency Planning and Community Right to Know Act of 1986 (EPCRTKA, 42 U.S.C. §11001 *et seq.*), the Arizona Water Quality Control Program (A.R.S. Title 49, Chapter 2), the Arizona Hazardous Waste Disposal Act (A.R.S. Title 49 Chapter 5), the Arizona Underground Storage Tank Regulation Act (A.R.S. Title 49, Chapter 6) and/or any regulations promulgated pursuant to the foregoing. If any new information concerning any of the foregoing is discovered by Stilo or if Stilo receives notice of any violation or claimed violation of any law, ordinance, rule or regulation relating to an Environmental Pollutant, Stilo shall give prompt written notice thereof to the Town prior to the close of escrow for the property for which new information is discovered or for which Stilo has received notice.

g. The provisions of this Section 6 shall survive for one year after the Closing Date.

As used in this Agreement, the phrase "to Stilo's actual knowledge" or words of similar import shall mean the actual (and not constructive or imputed) knowledge, without independent investigation or inquiry or duty to investigate or inquire, of Tom DePaolo. Tom DePaolo shall have no personal liability arising out of this Agreement.

7. Pre-Closing Covenants of Stilo. From the date hereof until the Closing Date:

a. Stilo shall maintain the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel in substantially the same manner as they are presently such that on the Closing Date, the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel shall be in substantially the same physical condition as they are as of the date hereof; and

b. Stilo shall continue in effect any insurance coverage relative to the Kotzin Second Town Housing Parcel and the TenX Second Town Housing Parcel.

8. Representations and Warranties of the Town. The Town hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement. The Town hereby further warrants and represents that no real estate commission is due to be paid as a result of its involvement in this Agreement and hereby, to the extent permitted by law, agrees to defend, indemnify and hold Stilo harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel. This Section 8 shall survive the Closing Date.

9. Closing. Upon receipt of the Town's Declaration, Stewart Title shall schedule a closing of this Escrow (the "**Closing**") no later than sixty (60) days thereafter. In addition, all of the following shall occur, it being understood that the performance or tender of performance of all matters set forth in this Section are mutually concurrent conditions:

- a. The Town, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title such documents as may be reasonably necessary or appropriate to issue the Title Policy.
- b. Stilo, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title the following:
 - i. A certificate informing the Town that Stilo is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code, as amended (the "**Code**"), and Regulations issued thereunder, such that withholding of tax is not required at the Closing.
 - ii. A standard Owner's Policy of Title Insurance in the amount set forth in Section 3(a) above insuring that the Town is the owner of indefeasible fee simple title to the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel (as the case may be) subject only to the Permitted Encumbrances, and the standard printed exceptions included in an Arizona standard form of Owner's Policy of Title Insurance.
 - iii. Such other documents as may be reasonably necessary or appropriate to issue the Title Policy.
- c. All normal and customarily pro ratable items including, without limitation, real property taxes, shall be prorated as of the Closing, Stilo being charged for all relating to the period up to the Closing and the Town being charged for all relating to the period on and after the Closing. If the actual amounts to be prorated are not known as of the Closing, the prorations shall be made on the basis of the best evidence then available and, thereafter, when actual figures are received, a cash settlement will be made between Stilo and the Town. No proration will be made in relation to insurance premiums, and any existing insurance policies will not be assigned to the Town. The provisions of this Section shall survive the Closing.
- d. In addition to the other costs and expenses specifically provided for herein, the costs and expenses of the Closing shall be borne as follows:
 - i. Stilo shall be obligated for and shall pay:
 - A. The escrow fee, if any, charged by Stewart Title;
 - B. The cost of recording the deeds;
 - C. The premium for the standard Owner's Policy of Title Insurance without endorsements (but not the additional premium for an extended owner's policy);
 - D. The cost of the Survey; and

- E. Stilo's attorneys' fees;
- ii. The Town shall be obligated for and shall pay:
 - A. The additional premium for an extended owner's policy of title insurance, if desired, and for endorsements;
 - B. The Town's attorneys' fees;
- e. Upon completion of the Closing, Stilo shall deliver possession of the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel to the Town as required by this Section 9.

10. Notices. Any notice provided or permitted to be given under this Agreement shall be in writing and shall be served by at least one of the following methods: (a) depositing same in the United States mail or with an overnight courier service, addressed to the party to be notified, postage prepaid and certified with return receipt requested if mailed; (b) by delivering the same in person to such party; or (c) by facsimile provided the sender obtains a confirmation of successful transmission. Notice given in accordance with this Section shall be effective upon the earlier of: actual receipt (or refusal of receipt), however given or received; or 72 hours after deposit in the mails; or one (1) Business Day after deposit with an overnight courier service, in the manner set forth above; and notice given in any other manner shall be effective only upon actual receipt (or refusal of receipt) at the address of the addressee. Notwithstanding the foregoing, notices actually received by any party, however given or received, always shall be effective and shall be deemed effective upon the earlier of: actual receipt, or the end of the time period for effectiveness specified in this Section for the method of delivery actually utilized. For purposes of notice, the addresses and facsimile numbers of the parties are as follows (or such other addresses or facsimile numbers as either party may from time to time furnish in writing to the other party):

If to Stilo, to:

Stilo Development Group USA. LP
c/o Tom DePaolo
7610 East McDonald
Scottsdale, Arizona 85250
Facsimile: (____)_____

With a copy to:

Grady Gammage
Gammage & Burnham, PLC
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004-4470
Facsimile: 602-256-4475

If to the Town, to:

Town Manager
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: 928-638-9910

With a copy to:

Town Attorney
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: 928-638-9910

If to Stewart Title:

Stewart Title Company
150 N. Verde Street, Suite 102
Flagstaff, Arizona 86001-5257
Attn: _____
Facsimile: 928-779-3277

11. Assignment. Neither party may assign their rights or obligations under this Agreement without, in each case, the prior written permission and consent of the other party, which permission and consent may be granted or denied in such other party's sole discretion.

12. Binding Effect; No Third Party Benefit. This Agreement shall inure to the benefit of and be binding on the parties hereto. This Agreement is for the sole benefit of Stilo and the Town, and no third party (including, without limitation, any real estate broker or any subsequent owners of any of the real property effected hereby) is intended to be a beneficiary of or have the right to enforce this Agreement.

13. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. Any claim or dispute arising out of or related to this Agreement or the enforcement or interpretation hereof shall be brought in a court of competent jurisdiction sitting within Coconino County, Arizona.

14. Default, Termination and Remedies. If either party fails to perform any of its obligations or agreements hereunder, the other party shall have the rights and remedies set forth in the First Amendment.

15. Entire Agreement; Exhibits; No Oral Modification. The Development Agreement, the First Amendment and this Agreement (including the Exhibits hereto) form the entire agreement between Stilo and the Town concerning the sales of the real property described herein and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

16. Miscellaneous. Whenever herein the singular number is used, the same shall include the plural, and the plural shall include the singular where appropriate, and words of any gender shall include the other gender where appropriate. The headings of the Sections contained in this

Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement. The words "**hereof**" and "**herein**" refer to this entire Agreement and not merely the Section in which such words appear unless the clear meaning is otherwise. As used herein, the term "**Business Day**" shall mean each day Monday through Friday except days on which Stewart Title is closed or national banks located in Flagstaff, Arizona are authorized or required by law or other governmental actions to close.

17. **Multiple Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signature of, or on behalf of, each of the parties hereto. A signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

18. **Construction.** This Agreement and any documents delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions thereof. Moreover, each and every provision of this Agreement and such other documents shall be construed as though both parties hereto had participated equally in the drafting thereof. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

19. **Recordation.** Neither this Agreement nor any memorandum thereof shall be recorded in the office of the county clerk or recorder of the county in which the subject real property is located.

20. **Attorneys' Fees.** In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive the Closing.

21. **IRS Real Estate Sales Reporting.** Stilo and the Town hereby appoint Stewart Title as, and Stewart Title agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Code Section 6045(e). Stewart Title shall prepare and file the informational return (IRS Form 1099-B) and any other necessary reports, returns and statements if and as required by, and otherwise shall comply with the terms of, Code Section 6045(e). Stewart Title further agrees to indemnify and hold Stilo, the Town and their respective attorneys harmless for, from and against all claims, costs, liabilities, penalties and expenses resulting from Stewart Title's failure to file the appropriate reports and otherwise comply with the terms of the Code pursuant to this Section.

22. **Time is of the Essence; No Waiver.** Time is of the essence of this Agreement and every term, covenant and condition hereof. No waiver or omission by any party to enforce any rights or remedies under this Agreement shall constitute a waiver of such rights or remedies or to

require the other party's strict compliance with the terms hereof. Any waiver by any party, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver of any other default or in any other instance.

THE TOWN:

THE TOWN OF TUSAYAN, an Arizona municipal corporation

ATTEST:

Town Clerk

By: _____
Greg Bryan, Mayor

APPROVED AS TO FORM:

Town Attorney

STILO:

STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP an Arizona limited partnership

By: _____

Printed Name: _____

Its: _____

STEWART TITLE COMPANY:

By: _____

Print Name: _____

Title: _____

LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | Depiction of the Kotzin Property |
| Exhibit B | Depiction of the TenX Property |
| Exhibit C | Description of the Kotzin Second Town Housing Parcel
and Form of Deed |
| Exhibit D | Description of the TenX Second Town Housing Parcel
and the Form of Deed |

Exhibit A
Depiction of the Kotzin Property

Exhibit B
Depiction of the TenX Property

Exhibit C
Description of the Kotzin Second Town Housing Parcel
and the Form of Deed

When recorded, return to:

Town Clerk
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023

**SPECIAL WARRANTY DEED
WITH REVERTER**

(Second Town Housing Parcel - Kotzin)

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP, an Arizona limited partnership ("Grantor"), hereby grants, sells and conveys to THE TOWN OF TUSAYAN, an Arizona municipal corporation ("Grantee"), that real property located in Coconino County, Arizona, and legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all interests, privileges and easements appurtenant thereto and any and all improvements located thereon ("Property").

SUBJECT TO: real estate taxes, assessments and any other liens arising therefrom, all reservations in patents, deed restrictions, if any, all easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, encumbrances, obligations and liabilities as may appear of record, and any and all other matters that can be determined by a visual inspection or a complete and accurate survey of the Property.

Notwithstanding the foregoing, Grantor warrants title to the Property, subject to the matters referred to above, only against its own acts, but not the acts of any others.

FURTHER SUBJECT TO the following conditions and restrictions:

1. Development Agreement. This Special Warranty Deed With Reverter has been recorded as required by that Pre-Annexation and Development Agreement by and between Grantor and Grantee dated as of the 1st day of July, 2011 recorded on November 9, 2011 as instrument number 3610450 in the official records of Coconino County, Arizona and that First Amendment thereto dated as of the ____ day of _____ 2013 recorded on _____, 2013 as instrument number _____ (the "Development Agreement"). All terms with

initial capitalization not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement

2. Use Restriction. The use of the Property shall be limited and restricted to public housing or "other public purposes." For purposes of this Special Warranty Deed with Reverter, "other public purposes" includes such use as a park or other Town facility and may include the transfer of any or all of the Property to a Town Housing Authority defined in A.R.S. 36-1401 in order to allow the Town to finance, construct and develop additional housing.

3. Reverter. Subject to the provisions of Section 4 below, title to all or a portion of the Property shall revert to Grantor or the then assignee of Grantor's rights if the use of this Special Warranty Deed With Reverter is violated (a "Reversion Triggering Event").

4. Procedure Upon Reversion Triggering Event. At Grantor's sole election, which shall be waived if not made in writing within 180 days following the occurrence of the Reversion Triggering Event, upon the occurrence of the Reversion Triggering Event, then Grantor may send a written notice of violation (the "Violation Notice") to Grantee. If Grantee disagrees with the Violation Notice, then, within thirty (30) days after receipt of the Violation Notice, Grantee shall submit to Grantor or the then assignee of Grantor's rights hereunder a written notice of disagreement, in which event the dispute resolution provisions of Section 21 of the Development Agreement shall apply. If Grantee does not submit a written objection within the time set forth above, or upon resolution of the dispute in favor of Grantor or the then assignee of Grantor's rights hereunder, then Grantor or the then assignee of Grantor's rights hereunder may record a notice of exercise of reverter or other document as may be deemed necessary by Grantor or the then assignee of Grantor's rights hereunder. Upon the recording of such instrument, title to the Property, or applicable portion thereof, shall vest in Grantor or the then assignee of Grantor's rights hereunder subject to all matters then of record, except that Grantee shall satisfy all monetary obligations then of record within thirty (30) days after such recordation. All notices shall be delivered in the manner set forth in the Development Agreement. Grantee shall execute any document reasonably required to give effect to this provision.

5. Covenants Running with Land. The foregoing conditions and restrictions shall be deemed covenants running with the land and binding upon Grantee and its successors and assigns.

6. Reverter Period. The reversion right herein shall automatically expire upon the date that is 21 years after the death of the last survivor of the now living descendants of United States President Barack Obama.

7. Successors and Assigns. Any assignee of Grantee's rights hereunder is hereby given notice of the terms hereof. By accepting any transfer of Grantee's rights hereunder, such assignee agrees to be bound by the terms of this Special Warranty Deed With Reverter as if executed and delivered by such assignee. Grantor may assign its rights

hereunder only to those persons or entities described in Section 19 of the Development Agreement.

8. Miscellaneous. Any provision or provisions of this Special Warranty Deed which shall be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all of the remaining provisions hereof shall nevertheless remain in full force and effect, and such invalid, void or illegal provision shall be deemed to be severed from the terms of this Special Warranty Deed With Reverter.

DATED as of this _____ day of _____, 20__.

"GRANTOR"

**STILO DEVELOPMENT GROUP USA
LIMITED PARTNERSHIP**, an Arizona limited
partnership

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 20__, before me, the undersigned officer, _____ personally _____ appeared him/herself to be the _____ who acknowledged _____ of STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP, an Arizona limited partnership, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Special Warranty Deed with Reverter
Date of Document	
Number of Pages	
Add'l Signers (other than those named in this notarial certificate)	

Town Clerk

THE TOWN OF TUSAYAN,
an Arizona municipal corporation

By _____
Greg Bryan, Mayor

STATE OF ARIZONA)
COUNTY OF COCONINO) ss.

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared Greg Bryan, who acknowledged himself to be Mayor of THE TOWN OF TUSAYAN, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Special Warranty Deed with Reverter
Date of Document	
Number of Pages	
Add'l Signers (other than those named in this notarial certificate)	

EXHIBIT A
LEGAL DESCRIPTION

Exhibit D
Description of TenX Second Town Housing Parcel
and the Form of Deed

[Same General Form as Exhibit C]

Exhibit 6

ESCROW INSTRUCTIONS AND FORM OF DEED FOR ADDITIONAL HOUSING PARCEL

This Escrow Agreement (the "**Agreement**") is made as of _____, 20__ by and among the Town of Tusayan, an Arizona municipal corporation (the "**Town**"), Stilo Development Group USA Limited Partnership., an Arizona limited partnership ("**Stilo**") and Stewart Title Company, a _____ corporation ("**Stewart Title**")

RECITALS

J. The Town and Stilo are party to that certain Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, dated July 1, 2011 and recorded November 9, 2011 as instrument number 3610450, Records of Coconino County, Arizona, the associated Memorandum of Development Agreement Exhibits dated November 17, 2011 and recorded November 23, 2011 as instrument number 3611694, Records of Coconino County, Arizona as amended by that First Amendment dated _____, 2013 and recorded _____ as instrument number _____ in the Records of Coconino County, Arizona (the "**First Amendment**" and collectively the "**Development Agreement**").

K. Among the parcels of real property subject to the Development Agreement are the following Coconino County tax parcels:

502-16-006 (the "**Kotzin Property**") as depicted on Exhibit A; and

502-14-001 (the "**TenX Property**") as depicted on Exhibit B.

L. Stilo owns the Kotzin Parcel and the TenX Parcel.

M. Pursuant to Section 7(i)(v) of the First Amendment, Stilo is obligated to transfer title to ten (10) acres of the Kotzin Property (the "**Additional Housing Parcel**") to the Town for no monetary consideration. The obligation of Stilo to transfer to the Town either the Kotzin Second Town Housing Parcel or the TenX Second Town Housing Parcel is irrevocable. Section 7(i)(v) of the First Amendment establishes certain conditions for the transfer of the Additional Housing Parcel. Those conditions are set forth in Section 9 of this Agreement.

N. The precise legal description of the Additional Housing Parcel is unknown but is generally depicted at Exhibit C.

O. Stilo has established an escrow account (No. 11450318) (the "**Escrow**") at Stewart Title to irrevocably transfer title to the Additional Housing Parcel if the conditions set forth in Section 9 of this Agreement are satisfied.

P. The Development Agreement was determined to be a legislative act pursuant to stipulation in the matter of *Stilo Development Group USA, LP, et al. v. Town of Tusayan, et al.*, Case No. CV2012-00080, Coconino County Superior Court.

Q. This Agreement implements the Development Agreement and unless otherwise defined, capitalized terms used herein shall have the meaning set forth in the Development Agreement.

AGREEMENTS

1. Recitals as Agreements. The foregoing Recitals are true and correct and are incorporated herein as agreements.

2. Irrevocability. This Agreement and the Escrow become irrevocable upon delivery of a fully signed copy of this Agreement to Stewart Title. This Agreement and the Escrow shall remain irrevocable and in full force and effect until Closing.

3. Deeds for Transfer of the Additional Housing Parcel. Transfer of fee simple title to the Additional Housing Parcel shall be pursuant to the deed in the form attached as Exhibit C (the "**Deed**"), a fully signed original of which shall be deposited with Stewart Title contemporaneously with the delivery into Escrow of a fully signed copy of this Agreement. Stilo hereby irrevocably delivers the Deed to Security Title to be held in trust for the benefit of the Town pursuant to the terms of this Agreement. The legal description to be attached to the Deed contemporaneously with the delivery of a fully signed copy of this Agreement into Escrow on the Effective Date of the First Amendment is described on Exhibit C. Prior to the Closing Date, the legal description shall be replaced with updated legal descriptions pursuant to Section 4.c of this Agreement.

4. Conditions Precedent to the Transfer of the Additional Housing Parcel.

a. Title Commitment. Within ten (10) days after Town's delivery of a declaration that it has reached the Ten Year Milestone (as defined in Section 7 (i)(v) of the First Amendment) (the "**Town Declaration**"), Stilo shall cause Stewart Title to deliver to the Town and to Stilo an Arizona form title commitment ("**Title Commitment**") for the Additional Housing Parcel together with copies of all documents and other items referred to in the Title Commitment as exceptions. The date that the Town makes the Town Declaration shall be the "**Town Declaration Date.**" The Title Commitment shall be for an extended owner's policy of title insurance ("**Title Policy**") in an amount to be agreed upon by the parties not later than ten (10) days prior to the Closing Date (as that date is determined pursuant to Section 9 of this Agreement).

b. Title Review. The Town shall have forty-five (45) days to examine the Title Commitment and to specify to Stilo in writing those items reflected therein that the Town will accept subject to (the "**Permitted Encumbrances**") and those matters reflected in the Title Commitment that the Town finds objectionable. The Town need not object to any monetary encumbrances, which Stilo agrees to remove at or prior to the Closing Date. If the Town makes any such written objection, Stilo shall have until the Closing

Date to use its good faith efforts to cure such objections and have the Title Commitment updated to reflect such cure; provided, however, that Stilo shall have no obligation to spend more than \$3,500 (the "**Maximum Cure Amount**") to affect such cure. The Maximum Cure Amount shall not limit Stilo's obligation to remove monetary encumbrances. If Stilo anticipates that the Maximum Cure Amount will be exceeded, Stilo shall notify the Town and within thirty (30) days thereafter the Town and Stilo shall mutually agree upon a substitute twenty (20) acre parcel to replace the parcel that is the subject of the objection for which the Maximum Cure Amount will be exceeded. The Town and Stilo shall continue this process until a replacement parcel can be identified. If a replacement parcel cannot be identified for which a Town objection can be cured at cost less than the Maximum Cure Amount, Stilo must cure the Town's objection for the replacement parcel for which the lowest amount must be expended to cure the Town's objection. If the Town's objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement. If the Town fails to give written notice to Stilo of any objections during the sixty (60) day review period, it shall be deemed that all exceptions shown in the Title Commitment are acceptable, and all such exceptions shall be Permitted Encumbrances.

c. Survey. Within ten (10) days after the Town Declaration Date, Stilo shall provide to the Town and Stewart Title an ALTA survey of the Additional Housing that provides a legal description for the Additional Housing Parcel. The surveyor shall be instructed to stake the Additional Housing. The Survey and updated legal descriptions shall be submitted to the Town and to the Bureau of Land Management ("**BLM**") for approval. Within three (3) Business Days (defined below) of its receipt of the BLM approved Survey, Stilo shall provide a copy thereof to the Town and, upon such receipt, the Town shall have sixty (60) days to examine the Survey with regard to the Additional Housing Parcel and to specify to Stilo in writing those items reflected thereon that the Town finds objectionable. If the Town makes any such written objection, Stilo and the Town shall jointly work in good faith with the surveyor to resolve the Town's objections but Stilo shall not be required to spend more than the Maximum Cure Amount to resolve any of the Town's objections to the Survey and to the condition of title, taken jointly, subject to Stilo's obligation to identify a replacement parcel that is acceptable to the Town in accordance with a process consistent with the review and approval process set forth in Section 4.b above. Should the parties be unable to resolve any of the Town's objections, the dispute will be resolved in the manner set forth in the Development Agreement. Upon the passage of the Town's sixty (60) day examination and objection period without Stilo's receipt of any written objections, or upon the resolution of such objections, the Survey, as revised if necessary, shall be delivered to Stewart Title.

d. Amendment to Title Commitment. Within thirty (30) days after the Town Declaration Date of the First Amendment, Stewart Title shall amend the Title Commitment ("**Amended Title Commitment**") to include the update legal description described in the Survey and shall deliver such amendment to the parties. Upon receipt of the Amended Title Commitment, the Town shall have the right to review and approve the Amended Title Commitment pursuant to a process consistent with the review and approval process set forth in Section 4.b above.

e. Environmental Reports. If Stilo has in its possession a Phase I environmental assessment report pertaining to the Additional Housing Parcel, Stilo shall, without representation or warranty, deliver such report to the Town within ten (10) days after the Town Declaration Date. If Stilo does not have such reports in its possession, it shall have no obligation to obtain one, unless Stilo commissioned a Phase I environmental assessment for the Additional Housing Parcel within six (6) months prior to the Town Declaration Date, in which case Stilo shall cause the consultant who prepared the Phase I environmental assessment to provide Stilo and the Town such assessment. The Town may also (at its expense) order a Phase I environmental report and additional environmental reports if necessary for the Additional Housing Parcel. If the Town objects to the proposed Additional Housing Parcel based on information provided in an environmental report, the Town must provide that objection to Stilo within forty-five (45) days after the delivery of a fully signed original environmental report. Thereafter, the parties shall work in good faith to resolve the Town's objections, but Stilo shall have no financial obligation concerning the Town's objections, subject to Stilo's obligation to identify a replacement parcel that is acceptable to the Town in accordance with a process consistent with the review and approval process set forth in Section 4.b above. If the Town's objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement.

5. Inspection of the Additional Housing Parcel. At any time prior to the Closing Date, the Town shall have the right but not the obligation, at its sole cost, expense and risk, to enter upon and to examine and inspect the Additional Housing Parcel and to conduct any feasibility studies thereon that it may desire. Stilo shall be entitled to copies of all test results, inspection reports or feasibility reports generated as a result of any such study, including (without limitation) any environmental reports obtained by the Town pursuant to Section 4.e above; provided, however, that the Town does not warrant or represent the accuracy of any such items. Should the Town avail itself of the rights set forth in this Section 5, the Town shall indemnify and hold Stilo harmless to the extent permitted by law from and against any and all costs, liabilities, claims, liens, encumbrances or causes of action (including, without limitation, reasonable attorneys' fees) arising out of the Town's actions taken in conjunction with exercising its rights under this Section 5, and such indemnification obligation shall survive the Closing Date.

6. Representations and Warranties of Stilo.

a. Except as expressly set forth herein and in the deed applicable to a conveyed parcel, Stilo makes no representations or warranties of any kind to the Town including, without limitation, the physical condition of the Additional Housing Parcel or its suitability for any particular purpose.

b. Stilo hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement.

c. Stilo hereby warrants and represents that no real estate commission is due to be paid as a result of its involvement in this Agreement and hereby agrees to defend,

indemnify and hold the Town harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the Additional Housing Parcel.

d. Neither the execution of this Agreement or the Deed described herein nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement, court order or other arrangement to which Stilo is a party or by which Stilo may be bound.

e. To Stilo's actual knowledge, there is no investigation, litigation or proceeding pending or threatened, which adversely affects any of the property described herein, Stilo's interest therein, or Stilo's ability to perform hereunder. Stilo has not received notice of and does not have any knowledge of, any pending or threatened investigation, litigation or proceeding in eminent domain, special assessment, zoning, or otherwise, which would adversely affect the property described herein.

f. To Stilo's actual knowledge, the property described herein is in compliance with all federal and state environmental laws, codes, orders, decrees, rules, regulations and ordinances and no environmental pollutant has been stored or exists in, on, under or around the property described herein. No environmental legal action exists nor, to Stilo's actual knowledge, is there a basis for such an action with respect to the property. Without limiting the foregoing, for purposes of this Agreement, "**Environmental Pollutant**" shall mean any substances, wastes, pollutants, chemicals, compounds, mixtures or contaminants now or hereafter included within those respective terms under any now existing or hereafter or amended federal, state or local statute, ordinance, code or regulation which, due to its characteristics or interaction with one or more other substances, wastes, chemicals, compounds, mixtures or contaminants, damages or threatens to damage health, safety, or the environment and is required to be remediated by any law applicable to the property described herein, including (without limitation): The Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §6901 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. §9601 *et seq.*) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. §2601 *et seq.*), the Emergency Planning and Community Right to Know Act of 1986 (EPCRTKA, 42 U.S.C. §11001 *et seq.*), the Arizona Water Quality Control Program (A.R.S. Title 49, Chapter 2), the Arizona Hazardous Waste Disposal Act (A.R.S. Title 49 Chapter 5), the Arizona Underground Storage Tank Regulation Act (A.R.S. Title 49, Chapter 6) and/or any regulations promulgated pursuant to the foregoing. If any new information concerning any of the foregoing is discovered by Stilo or if Stilo receives notice of any violation or claimed violation of any law, ordinance, rule or regulation relating to an Environmental Pollutant, Stilo shall give prompt written notice thereof to the Town prior to the close of escrow for the property for which new information is discovered or for which Stilo has received notice.

g. The provisions of this Section 6 shall survive for one year after the Closing Date.

As used in this Agreement, the phrase "to Stilo's actual knowledge" or words of similar import shall mean the actual (and not constructive or imputed) knowledge, without independent investigation or inquiry or duty to investigate or inquire, of Tom DePaolo. Tom DePaolo shall have no personal liability arising out of this Agreement.

7. Pre-Closing Covenants of Stilo. From the date hereof until the Closing Date:
 - a. Stilo shall maintain the Additional Housing Parcel in substantially the same manner as it is presently such that on the Closing Date, the Additional Housing Parcel shall be in substantially the same physical condition as it is as of the date hereof; and
 - b. Stilo shall continue in effect any insurance coverage relative to the Additional Housing Parcel.
8. Representations and Warranties of the Town. The Town hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement. The Town hereby further warrants and represents that no real estate commission is due to be paid as a result of its involvement in this Agreement and hereby, to the extent permitted by law, agrees to defend, indemnify and hold Stilo harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the Additional Housing Parcel. This Section 8 shall survive the Closing Date.
9. Closing. Upon receipt of the Town Declaration, Stewart Title shall schedule a closing of this Escrow (the "**Closing**") no later than sixty (60) days thereafter. In addition, all of the following shall occur, it being understood that the performance or tender of performance of all matters set forth in this Section are mutually concurrent conditions:
 - a. The Town, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title such documents as may be reasonably necessary or appropriate to issue the Title Policy.
 - b. Stilo, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title the following:
 - i. A certificate informing the Town that Stilo is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code, as amended (the "**Code**"), and Regulations issued thereunder, such that withholding of tax is not required at the Closing.
 - ii. A standard Owner's Policy of Title Insurance in the amount set forth in Section 3(a) above insuring that the Town is the owner of indefeasible fee simple title to the Additional Housing Parcel subject only to the Permitted Encumbrances, and the standard printed exceptions included in an Arizona standard form of Owner's Policy of Title Insurance.

iii. Such other documents as may be reasonably necessary or appropriate to issue the Title Policy.

c. All normal and customarily pro rata items including, without limitation, real property taxes, shall be prorated as of the Closing, Stilo being charged for all relating to the period up to the Closing and the Town being charged for all relating to the period on and after the Closing. If the actual amounts to be prorated are not known as of the Closing, the prorations shall be made on the basis of the best evidence then available and, thereafter, when actual figures are received, a cash settlement will be made between Stilo and the Town. No proration will be made in relation to insurance premiums, and any existing insurance policies will not be assigned to the Town. The provisions of this Section shall survive the Closing.

d. In addition to the other costs and expenses specifically provided for herein, the costs and expenses of the Closing shall be borne as follows:

i. Stilo shall be obligated for and shall pay:

- A. The escrow fee, if any, charged by Stewart Title;
- B. The cost of recording the deeds;
- C. The premium for the standard Owner's Policy of Title Insurance without endorsements (but not the additional premium for an extended owner's policy);
- D. The cost of the Survey; and
- E. Stilo's attorneys' fees;

ii. The Town shall be obligated for and shall pay:

- A. The additional premium for an extended owner's policy of title insurance, if desired, and for endorsements;
- B. The Town's attorneys' fees;

e. Upon completion of the Closing, Stilo shall deliver possession of the Additional Housing Parcel to the Town as required by this Section 9.

10. Notices. Any notice provided or permitted to be given under this Agreement shall be in writing and shall be served by at least one of the following methods: (a) depositing same in the United States mail or with an overnight courier service, addressed to the party to be notified, postage prepaid and certified with return receipt requested if mailed; (b) by delivering the same in person to such party; or (c) by facsimile provided the sender obtains a confirmation of successful transmission. Notice given in accordance with this Section shall be effective upon the

earlier of: actual receipt (or refusal of receipt), however given or received; or 72 hours after deposit in the mails; or one (1) Business Day after deposit with an overnight courier service, in the manner set forth above; and notice given in any other manner shall be effective only upon actual receipt (or refusal of receipt) at the address of the addressee. Notwithstanding the foregoing, notices actually received by any party, however given or received, always shall be effective and shall be deemed effective upon the earlier of: actual receipt, or the end of the time period for effectiveness specified in this Section for the method of delivery actually utilized. For purposes of notice, the addresses and facsimile numbers of the parties are as follows (or such other addresses or facsimile numbers as either party may from time to time furnish in writing to the other party):

If to Stilo, to:

Stilo Development Group USA, LP
c/o Tom DePaolo
7610 East McDonald
Scottsdale, Arizona 85250
Facsimile: (____) _____

With a copy to:

Grady Gammage
Gammage & Burnham, PLC
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004-4470
Facsimile: 602-256-4475

If to the Town, to:

Town Manager
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: 928-638-9910

With a copy to:

Town Attorney
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: 928-638-9910

If to Stewart Title:

Stewart Title Company
150 N. Verde Street, Suite 102
Flagstaff, Arizona 86001-5257
Attn: _____
Facsimile: 928-779-3277

11. Assignment. Neither party may assign their rights or obligations under this Agreement without, in each case, the prior written permission and consent of the other party, which permission and consent may be granted or denied in such other party's sole discretion.

12. Binding Effect; No Third Party Benefit. This Agreement shall inure to the benefit of and be binding on the parties hereto. This Agreement is for the sole benefit of Stilo and the Town, and no third party (including, without limitation, any real estate broker or any subsequent owners of any of the real property effected hereby) is intended to be a beneficiary of or have the right to enforce this Agreement.

13. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. Any claim or dispute arising out of or related to this Agreement or the enforcement or interpretation hereof shall be brought in a court of competent jurisdiction sitting within Coconino County, Arizona.

14. Default, Termination and Remedies. If either party fails to perform any of its obligations or agreements hereunder, the other party shall have the rights and remedies set forth in the First Amendment.

15. Entire Agreement; Exhibits; No Oral Modification. The Development Agreement, the First Amendment and this Agreement (including the Exhibits hereto) form the entire agreement between Stilo and the Town concerning the sales of the real property described herein and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

16. Miscellaneous. Whenever herein the singular number is used, the same shall include the plural, and the plural shall include the singular where appropriate, and words of any gender shall include the other gender where appropriate. The headings of the Sections contained in this Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement. The words "**hereof**" and "**herein**" refer to this entire Agreement and not merely the Section in which such words appear unless the clear meaning is otherwise. As used herein, the term "**Business Day**" shall mean each day Monday through Friday except days on which Stewart Title is closed or national banks located in Flagstaff, Arizona are authorized or required by law or other governmental actions to close.

17. Multiple Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signature of, or on behalf of, each of the parties hereto. A signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

18. Construction. This Agreement and any documents delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions thereof. Moreover, each and every provision of this Agreement and such other documents shall be construed as though both parties hereto had participated equally in the drafting thereof. As a

result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

19. Recordation. Neither this Agreement nor any memorandum thereof shall be recorded in the office of the county clerk or recorder of the county in which the subject real property is located.

20. Attorneys' Fees. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive the Closing.

21. IRS Real Estate Sales Reporting. Stilo and the Town hereby appoint Stewart Title as, and Stewart Title agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Code Section 6045(e). Stewart Title shall prepare and file the informational return (IRS Form 1099-B) and any other necessary reports, returns and statements if and as required by, and otherwise shall comply with the terms of, Code Section 6045(e). Stewart Title further agrees to indemnify and hold Stilo, the Town and their respective attorneys harmless for, from and against all claims, costs, liabilities, penalties and expenses resulting from Stewart Title's failure to file the appropriate reports and otherwise comply with the terms of the Code pursuant to this Section.

22. Time is of the Essence; No Waiver. Time is of the essence of this Agreement and every term, covenant and condition hereof. No waiver or omission by any party to enforce any rights or remedies under this Agreement shall constitute a waiver of such rights or remedies or to require the other party's strict compliance with the terms hereof. Any waiver by any party, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver of any other default or in any other instance.

THE TOWN:

THE TOWN OF TUSAYAN, an Arizona municipal corporation

ATTEST:

Town Clerk

By: _____
Greg Bryan, Mayor

APPROVED AS TO FORM:

Town Attorney

STILO:

STILO DEVELOPMENT GROUP USA LIMITED
PARTNERSHIP an Arizona limited partnership

By: _____

Printed Name: _____

Its: _____

STEWART TITLE COMPANY:

By: _____

Print Name: _____

Title: _____

LIST OF EXHIBITS

- | | |
|-----------|---|
| Exhibit A | Depiction of the Kotzin Property |
| Exhibit B | Depiction of the TenX Property |
| Exhibit C | Description of the Additional Housing Parcel and Form of Deed |

Exhibit A
Depiction of the Kotzin Property

Exhibit B
Depiction of the TenX Property

Exhibit C
Description of the Additional Housing Parcel
and the Form of Deed

When recorded, return to:

Town Clerk
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023

**SPECIAL WARRANTY DEED
WITH REVERTER**

(Additional Housing Parcel)

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP, an Arizona limited partnership ("Grantor"), hereby grants, sells and conveys to THE TOWN OF TUSAYAN, an Arizona municipal corporation ("Grantee"), that real property located in Coconino County, Arizona, and legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all interests, privileges and easements appurtenant thereto and any and all improvements located thereon ("Property").

SUBJECT TO: real estate taxes, assessments and any other liens arising therefrom, all reservations in patents, deed restrictions, if any, all easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, encumbrances, obligations and liabilities as may appear of record, and any and all other matters that can be determined by a visual inspection or a complete and accurate survey of the Property.

Notwithstanding the foregoing, Grantor warrants title to the Property, subject to the matters referred to above, only against its own acts, but not the acts of any others.

FURTHER SUBJECT TO the following conditions and restrictions:

1. Development Agreement. This Special Warranty Deed With Reverter has been recorded as required by that Pre-Annexation and Development Agreement by and between Grantor and Grantee dated as of the 1st day of July, 2011 recorded on November 9, 2011 as instrument number 3610450 in the official records of Coconino County, Arizona and that First Amendment thereto dated as of the ____ day of _____ 2013 recorded on _____, 2013 as instrument number _____ (the "Development Agreement"). All terms with

initial capitalization not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement

2. Use Restriction. The use of the Property shall be limited and restricted to public housing or "other public purposes." For purposes of this Special Warranty Deed with Reverter, "other public purposes" includes such use as a park or other Town facility and may include the transfer of any or all of the Property to a Town Housing Authority defined in A.R.S. 36-1401 in order to allow the Town to finance, construct and develop additional housing.

3. Reverter. Subject to the provisions of Section 4 below, title to all or a portion of the Property shall revert to Grantor or the then assignee of Grantor's rights if the use of this Special Warranty Deed With Reverter is violated (a "Reversion Triggering Event").

4. Procedure Upon Reversion Triggering Event. At Grantor's sole election, which shall be waived if not made in writing within 180 days following the occurrence of the Reversion Triggering Event, upon the occurrence of the Reversion Triggering Event, then Grantor may send a written notice of violation (the "Violation Notice") to Grantee. If Grantee disagrees with the Violation Notice, then, within thirty (30) days after receipt of the Violation Notice, Grantee shall submit to Grantor or the then assignee of Grantor's rights hereunder a written notice of disagreement, in which event the dispute resolution provisions of Section 21 of the Development Agreement shall apply. If Grantee does not submit a written objection within the time set forth above, or upon resolution of the dispute in favor of Grantor or the then assignee of Grantor's rights hereunder, then Grantor or the then assignee of Grantor's rights hereunder may record a notice of exercise of reverter or other document as may be deemed necessary by Grantor or the then assignee of Grantor's rights hereunder. Upon the recording of such instrument, title to the Property, or applicable portion thereof, shall vest in Grantor or the then assignee of Grantor's rights hereunder subject to all matters then of record, except that Grantee shall satisfy all monetary obligations then of record within thirty (30) days after such recordation. All notices shall be delivered in the manner set forth in the Development Agreement. Grantee shall execute any document reasonably required to give effect to this provision.

5. Covenants Running with Land. The foregoing conditions and restrictions shall be deemed covenants running with the land and binding upon Grantee and its successors and assigns.

6. Reverter Period. The reversion right herein shall automatically expire upon the date that is 21 years after the death of the last survivor of the now living descendants of United States President Barack Obama.

7. Successors and Assigns. Any assignee of Grantee's rights hereunder is hereby given notice of the terms hereof. By accepting any transfer of Grantee's rights hereunder, such assignee agrees to be bound by the terms of this Special Warranty Deed With Reverter as if executed and delivered by such assignee. Grantor may assign its rights

hereunder only to those persons or entities described in Section 19 of the Development Agreement.

8. Miscellaneous. Any provision or provisions of this Special Warranty Deed which shall be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all of the remaining provisions hereof shall nevertheless remain in full force and effect, and such invalid, void or illegal provision shall be deemed to be severed from the terms of this Special Warranty Deed With Reverter.

DATED as of this _____ day of _____, 20__.

"GRANTOR"

**STILO DEVELOPMENT GROUP USA
LIMITED PARTNERSHIP**, an Arizona limited
partnership

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 20____, before me, the undersigned officer, _____ personally _____ appeared _____ who acknowledged him/herself to be the _____ of STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP, an Arizona limited partnership, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Special Warranty Deed with Reverter
Date of Document	
Number of Pages	
Add'l Signers <i>(other than those named in this notarial certificate)</i>	

ATTEST:

Town Clerk

"TOWN"

THE TOWN OF TUSAYAN,
an Arizona municipal corporation

By _____
Greg Bryan, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

On this _____ day of _____, 20__, before me, the undersigned officer, personally appeared Greg Bryan, who acknowledged himself to be Mayor of THE TOWN OF TUSAYAN, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Special Warranty Deed with Reverter
Date of Document	
Number of Pages	
Add'l Signers (other than those named in this notarial certificate)	

EXHIBIT A

LEGAL DESCRIPTION

Exhibit 7

CONSENT TO CONDITIONS/WAIVER FOR DIMINUTION OF VALUE

The undersigned, Stilo Development Group USA, LP ("Stilo"), an Arizona limited partnership, is the owner of the parcel of land described in Attachment 1 hereto that is the subject of zoning cases Z2011-08-05-001, Z2011-08-05-002, and 2011-08-05-003 (collectively, the "Land Use Application"). By signing this document, the undersigned agrees and consents to all the conditions imposed by the Town of Tusayan in conjunction with the approval of the Land Use Application and as set forth in the Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, as well as and including the First Amendment thereto, (collectively, the "PADA") between the Town of Tusayan and Stilo and waives any right to compensation for diminution in value pursuant to Arizona Revised Statutes § 12-1134 that may arise as a result of the approval of the Land Use Application.

Original previously signed, re-signed this _____ day of _____, 2013.

STILO DEVELOPMENT GROUP USA, LP

By: _____
Thomas DePaolo, Authorized Representative

STATE OF ARIZONA)
) ss
County of _____)

On this ____ day of _____, 2013, before me, the undersigned Notary Public, personally appeared Thomas DePaolo, Authorized Representative of Stilo Development Group USA, LP, who acknowledged that this document was executed for the purposes therein contained.

Notary Public

When recorded, return to:

Town Clerk
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023

**SPECIAL WARRANTY DEED
WITH REVERTER**

(Kotzin Parcel)

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP, an Arizona limited partnership ("Grantor"), hereby grants, sells and conveys to THE TOWN OF TUSAYAN, an Arizona municipal corporation ("Grantee"), that real property located in Coconino County, Arizona, and legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference, together with all interests, privileges and easements appurtenant thereto and any and all improvements located thereon ("Property").

SUBJECT TO: real estate taxes, assessments and any other liens arising therefrom, all reservations in patents, deed restrictions, if any, all easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, encumbrances, obligations and liabilities as may appear of record, and any and all other matters that can be determined by a visual inspection or a complete and accurate survey of the Property.

Notwithstanding the foregoing, Grantor warrants title to the Property, subject to the matters referred to above, only against its own acts, but not the acts of any others.

FURTHER SUBJECT TO the following conditions and restrictions:

1. Development Agreement. This Special Warranty Deed With Reverter has been recorded as required by that Pre-Annexation and Development Agreement by and between Grantor and Grantee dated as of the 1st day of July, 2011 recorded on November 9, 2011 as instrument number 3610450 in the official records of Coconino County, Arizona and that First Amendment thereto dated as of the ___ day of _____ 2013 recorded on _____, 2013 as instrument number _____ (the "Development Agreement"). All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement

2. Use Restriction. The use of the Property shall be limited and restricted to public housing or "other public purposes." For purposes of this Special Warranty Deed with Reverter, "other public purposes" includes such use as a park or other Town facility and

may include the transfer of any or all of the Property to a Town Housing Authority defined in A.R.S. 36-1401 in order to allow the Town to finance, construct and develop additional housing.

3. Reverter. Subject to the provisions of Section 4 below, title to all or a portion of the Property shall revert to Grantor or the then assignee of Grantor's rights if the use restriction set forth in Section 2 of this Special Warranty Deed is violated (a "Reversion Triggering Event"):

4. Procedure Upon Reversion Triggering Event. At Grantor's sole election, which shall be waived if not made in writing within 180 days following the occurrence of the Reversion Triggering Event, upon the occurrence of the Reversion Triggering Event, then Grantor may send a written notice of violation (the "Violation Notice") to Grantee. If Grantee disagrees with the Violation Notice, then, within thirty (30) days after receipt of the Violation Notice, Grantee shall submit to Grantor or the then assignee of Grantor's rights hereunder a written notice of disagreement, in which event the dispute resolution provisions of Section 21 of the Development Agreement shall apply. If Grantee does not submit a written objection within the time set forth above, or upon resolution of the dispute in favor of Grantor or the then assignee of Grantor's rights hereunder, then Grantor or the then assignee of Grantor's rights hereunder may record a notice of exercise of reverter or other document as may be deemed necessary by Grantor or the then assignee of Grantor's rights hereunder. Upon the recording of such instrument, title to the Property, or applicable portion thereof, shall vest in Grantor or the then assignee of Grantor's rights hereunder subject to all matters then of record, except that Grantee shall satisfy all monetary obligations then of record within thirty (30) days after such recordation. All notices shall be delivered in the manner set forth in the Development Agreement. Grantee shall execute any document reasonably required to give effect to this provision.

5. Covenants Running with Land. The foregoing conditions and restrictions shall be deemed covenants running with the land and binding upon Grantee and its successors and assigns.

6. Reverter Period. The reversion right herein shall automatically expire upon the date that is 21 years after the death of the last survivor of the now living descendants of United States President Barack Obama.

7. Successors and Assigns. Any assignee of Grantee's rights hereunder is hereby given notice of the terms hereof. By accepting any transfer of Grantee's rights hereunder, such assignee agrees to be bound by the terms of this Special Warranty Deed With Reverter as if executed and delivered by such assignee. Grantor may assign its rights hereunder only to those persons or entities described in Section 19 of the Development Agreement.

8. Miscellaneous. Any provision or provisions of this Special Warranty Deed which shall be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all of the remaining provisions hereof shall nevertheless remain in full force and effect, and such invalid, void or illegal provision shall be deemed to be severed from the terms of this Special Warranty Deed With Reverter.

DATED as of this _____ day of _____, 20__.

"GRANTOR"

**STILO DEVELOPMENT GROUP USA
LIMITED PARTNERSHIP**, an Arizona limited
partnership

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 20____, before me, the undersigned
officer, _____ personally _____ appeared
him/herself to be the _____ who acknowledged
DEVELOPMENT GROUP USA LIMITED PARTNERSHIP, an Arizona limited
partnership, whom I know personally/whose identity was proven to me on the oath of
_____, a credible witness by me duly sworn/whose
identity was proven to me on the basis of satisfactory evidence to be the person whose name
is subscribed to this instrument/whose identity I verified on the basis of his/her
_____, and s/he, in such capacity, being authorized so to do,
executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Special Warranty Deed with Reverter
Date of Document	
Number of Pages	
Add'l Signers (other than those named in this notarial certificate)	

ATTEST:

"TOWN"

THE TOWN OF TUSAYAN,
an Arizona municipal corporation

Town Clerk

By _____
Greg Bryan, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

On this ____ day of _____, 20__, before me, the undersigned officer, personally appeared Greg Bryan, who acknowledged himself to be Mayor of THE TOWN OF TUSAYAN, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Special Warranty Deed with Reverter
Date of Document	
Number of Pages	
Add'l Signers (other than those named in this notarial certificate)	

EXHIBIT A

LEGAL DESCRIPTION

FIRST TOWN PARCEL ESCROW AGREEMENT

This Escrow Agreement (the "**Agreement**") is made as of September __, 2013 ("**First Escrow Agreement Effective Date**") by and among the Town of Tusayan, an Arizona municipal corporation (the "**Town**"), Stilo Development Group USA Limited Partnership., an Arizona limited partnership ("**Stilo**") and Stewart Title Company, a _____ corporation ("**Stewart Title**")

RECITALS

A. The Town and Stilo are party to that certain Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, dated July 1, 2011 and recorded November 9, 2011 as instrument number 3610450, Records of Coconino County, Arizona as amended by that First Amendment dated _____ and recorded _____ as instrument number _____ also in the Records of Coconino County, Arizona (the "**First Amendment**" and collectively the "**Development Agreement**") In order to induce the Town to enter into the Development Agreement (including the annexation of the TenX Property (defined below) and the related infrastructure requirements), Stilo agreed to dedicate forty (40) acres of property to the Town for the purpose of providing housing opportunities within the Town in accordance with the provisions therein.

B. Among the parcels of real property subject to the Development Agreement are the following Coconino County tax parcels:

502-16-006 (the "**Kotzin Property**") as depicted on Exhibit A; and

502-14-001 (the "**TenX Property**") as depicted on Exhibit B.

C. Stilo owns the Kotzin Parcel and the TenX Parcel.

D. As a condition to the negotiation and execution of a First Amendment, Stilo agreed to transfer a twenty (20) acre parcel of the Kotzin Property to the Town (the "**First Town Housing Parcel**").

E. Escrow number 13450239 (the "**Escrow**") has been opened at Stewart Title to irrevocably transfer of title of the First Town Housing Parcel from Stilo to the Town pursuant to this Agreement.

F. The Development Agreement was determined to be a legislative act pursuant to stipulation in the matter of *Stilo Development Group USA, LP, et al. v. Town of Tusayan, et al.*, Case No. CV2012-00080, Coconino County Superior Court.

G. This Agreement implements the Development Agreement and unless otherwise defined, capitalized terms used herein shall have the meaning set forth in the Development Agreement.

AGREEMENTS

1. Recitals as Agreements. The foregoing Recitals are true and correct and are incorporated herein as agreements.
2. Irrevocability. This Agreement and the Escrow become irrevocable upon delivery of a fully signed copy of this Agreement to Stewart Title. This Agreement and the Escrow shall remain irrevocable and in full force and effect until Closing.
3. Deed for Transfer of the First Town Housing Parcel. Transfer of fee simple title to the First Town Housing Parcel shall be pursuant to a deed in the form attached as Exhibit C (the "**Deed**"), a fully signed original of which shall be deposited with Stewart Title contemporaneously with the delivery into Escrow of a fully signed copy of this Agreement on the First Escrow Agreement Effective Date. Stilo hereby irrevocably delivers the Deed to Security Title to be held in trust for the benefit of the Town pursuant to the terms of this Agreement. The legal description to be attached to the Deed contemporaneously with the delivery of a fully signed copy of this Agreement into Escrow is described on Exhibit D. Prior to the Closing Date, the legal description shall be replaced with an updated legal description pursuant to Section 4.c of this Agreement.
4. Conditions Precedent to the Transfer of the First Town Housing Parcel. The following conditions must be satisfied as conditions precedent to the delivery of the Deed by the Escrow Agent to the Town.
 - a. Title Commitment. Within ten (10) days after the Effective Date of the First Amendment, Stilo shall cause Stewart Title to deliver to the Town and to Stilo an Arizona form title commitment ("**Title Commitment**") including the legal description for Parcel B described in the Survey as defined herein, together with copies of all documents and other items referred to in the Title Commitment as exceptions. The Title Commitment shall be for an extended owner's policy of title insurance ("**Title Policy**") in an amount to be agreed upon by the parties not later than five (5) days prior to the Closing Date (as that date is determined pursuant to Section 9 of this Agreement).
 - b. Title Review. The Town shall have ten (10) days to examine the Title Commitment and to specify to Stilo in writing those items reflected therein that the Town will accept concerning the First Town Housing Parcel subject to (the "**Permitted Encumbrances**") and those matters reflected in the Title Commitment that the Town finds objectionable. The Town need not object to any monetary encumbrances, which Stilo agrees to remove at or prior to the Closing Date. If the Town makes any such written objection, Stilo shall have until the Closing Date to use its good faith efforts to cure such objections and have the Title Commitment updated to reflect such cure; provided, however, that Stilo shall have no obligation to spend more than \$3,500 (the "**Maximum Cure Amount**") to affect such cure. The Maximum Cure Amount shall not limit Stilo's obligation to remove Monetary Encumbrances. If Stilo anticipates that the Maximum Cure Amount will be exceeded, Stilo shall notify the Town and within two (2) Business Days (defined below) thereafter the Town and Stilo shall mutually agree upon a substitute twenty (20) acre parcel to replace the parcel that is the subject of the objection for which the Maximum Cure Amount will be exceeded. The Town and Stilo shall

continue this process until a replacement parcel can be identified. If a replacement parcel cannot be identified for which a Town objection can be cured at cost less than the Maximum Cure Amount, Stilo must cure the Town's objection for the replacement parcel for which the lowest amount must be expended to cure the Town's objection. If the Town's objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement, as amended. If the Town fails to give written notice to Stilo of any objections during the ten (10) day review period, it shall be deemed that all exceptions shown in the Title Commitment are acceptable, and all such exceptions shall be Permitted Encumbrances. Within fifteen (15) days after the First Escrow Agreement Effective Date, Stewart Title shall amend the Title Commitment ("**Amended Title Commitment**") to include the updated legal descriptions described in the Survey and shall deliver such amendment to the parties. Upon receipt of the Amended Title Commitment, the Town shall have the right to review and approve the Amended Title Commitment pursuant to a process consistent with the review and approval process set forth in this Section 4.b.

c. Survey. Within ten (10) days after the Effective Date of the First Amendment, Stilo shall provide to the Town and Stewart Title a Record of Survey by Woodson Engineering and Surveying Co, Inc. (Project No. – 113672) stamped 5/15/2013 (the "Survey") that depicts and provides an updated legal description for the First Town Housing Parcel, shown as Parcel B therein. The Survey and legal description shall be submitted to the Town for review, which review shall be provided no later than five (5) Business Days (defined below) following the First Escrow Agreement Effective Date. If the Town timely makes any written objection to the Survey, Stilo and the Town shall jointly work in good faith with the surveyor to resolve the Town's objections but Stilo shall not be required to spend more than the Maximum Cure Amount to resolve any of the Town's objections to the Survey and to the condition of title, taken jointly, subject to Stilo's obligation to identify a replacement parcel that is acceptable to the Town in accordance with a process consistent with the review and approval process set forth in Section 4.b above. Should the parties be unable to resolve any of the Town's objections, the dispute will be resolved in the manner set forth in the Development Agreement, as amended. Upon the passage of each of the Town's ten (10) day examination and objection period without Stilo's receipt of any written objections, or upon the resolution of such objections, the Survey, as revised if necessary, shall be delivered to Stewart Title.

d. Environmental Reports. If Stilo has in its possession a Phase I environmental assessment report pertaining to the First Town Housing Parcel, Stilo shall, without representation or warranty, deliver such report to the Town within ten (10) days after the First Escrow Agreement Effective Date. If Stilo does not have such reports in its possession, it shall have no obligation to obtain one, unless Stilo commissioned a Phase I environmental assessment for the First Town Housing Parcel within the past sixty (60) months, in which case Stilo shall cause the consultant who prepared the Phase I environmental assessment to provide Stilo and the Town such assessment. The Town may also (at its expense) order a Phase I environmental report and additional environmental reports if necessary for the First Town Housing Parcel. If the Town objects to the parcel based on information provided in an environmental report, the Town must provide that objection to Stilo within ten (10) days after the delivery of a fully

signed original environmental report. Thereafter, the parties shall work in good faith to resolve the Town's objections, but Stilo shall have no financial obligation concerning the Town's objections, subject to Stilo's obligation to identify a replacement parcel that is acceptable to the Town in accordance with a process consistent with the review and approval process set forth in Section 4.b above. If the Town's objections cannot be resolved, the dispute shall be resolved in the manner set forth in the Development Agreement as amended.

e. First Amendment. Escrow Agent shall be in receipt of a Town Council approved First Amendment, executed by Stilo and the Town.

5. Inspection of the First Town Housing Parcel. At any time prior to the Closing Date, the Town shall have the right but not the obligation, at its sole cost, expense and risk, to enter upon and to examine and inspect the First Town Housing Parcel and to conduct any feasibility studies thereon that it may desire. Stilo shall be entitled to copies of all test results, inspection reports or feasibility reports generated as a result of any such study, including (without limitation) any environmental reports obtained by the Town pursuant to Section 4.d above; provided, however, that the Town does not warrant or represent the accuracy of any such items. Should the Town avail itself of the rights set forth in this Section 5, the Town shall indemnify and hold Stilo harmless to the extent permitted by law from and against any and all costs, liabilities, claims, liens, encumbrances or causes of action (including, without limitation, reasonable attorneys' fees) arising out of the Town's actions taken in conjunction with exercising its rights under this Section 5, and such indemnification obligation shall survive the Closing Date.

6. Representations and Warranties of Stilo.

a. Except as expressly set forth herein and in the Deed, Stilo makes no representations or warranties of any kind to the Town including, without limitation, the physical condition of the First Town Housing Parcel or its suitability for any particular purpose.

b. Stilo hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement.

c. Stilo hereby warrants and represents that no real estate commission is due to be paid as a result of its involvement in this Agreement and hereby agrees to defend, indemnify and hold the Town harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the First Town Housing Parcel.

d. Neither the execution of this Agreement or any of the Deed described herein nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement, court order or other arrangement to which Stilo is a party or by which Stilo may be bound.

e. To Stilo's actual knowledge, there is no investigation, litigation or proceeding pending or threatened, which adversely affects any of the property described herein, Stilo's interest therein, or Stilo's ability to perform hereunder. Stilo has not received notice of and does not have any knowledge of, any pending or threatened investigation, litigation or proceeding in eminent domain, special assessment, zoning, or otherwise, which would adversely affect the property described herein.

f. To Stilo's actual knowledge, the property described herein is in compliance with all federal and state environmental laws, codes, orders, decrees, rules, regulations and ordinances and no environmental pollutant has been stored or exists in, on, under or around the property described herein. No environmental legal action exists nor, to Stilo's actual knowledge, is there a basis for such an action with respect to the property. Without limiting the foregoing, for purposes of this Agreement, "**Environmental Pollutant**" shall mean any substances, wastes, pollutants, chemicals, compounds, mixtures or contaminants now or hereafter included within those respective terms under any now existing or hereafter or amended federal, state or local statute, ordinance, code or regulation which, due to its characteristics or interaction with one or more other substances, wastes, chemicals, compounds, mixtures or contaminants, damages or threatens to damage health, safety, or the environment and is required to be remediated by any law applicable to the property described herein, including (without limitation): The Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §6901 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. §9601 *et seq.*) as amended, the Toxic Substance Control Act (TSCA, 15 U.S.C. §2601 *et seq.*), the Emergency Planning and Community Right to Know Act of 1986 (EPCRTKA, 42 U.S.C. §11001 *et seq.*), the Arizona Water Quality Control Program (A.R.S. Title 49, Chapter 2), the Arizona Hazardous Waste Disposal Act (A.R.S. Title 49, Chapter 5), the Arizona Underground Storage Tank Regulation Act (A.R.S. Title 49, Chapter 6) and/or any regulations promulgated pursuant to the foregoing. If any new information concerning any of the foregoing is discovered by Stilo or if Stilo receives notice of any violation or claimed violation of any law, ordinance, rule or regulation relating to an Environmental Pollutant, Stilo shall give prompt written notice thereof to the Town prior to the close of escrow for the property for which new information is discovered or for which Stilo has received notice.

g. The provisions of this Section 6 shall survive for one year after the Closing Date.

As used in this Agreement, the phrase "to Stilo's actual knowledge" or words of similar import shall mean the actual (and not constructive or imputed) knowledge, without independent investigation or inquiry or duty to investigate or inquire, of Tom DePaolo. Tom DePaolo shall have no personal liability arising out of this Agreement.

7. Pre-Closing Covenants of Stilo. From the date hereof until the Closing Date:

a. Stilo shall maintain the First Town Housing Parcel in substantially the same manner as it is presently such that on the Closing Date, the First Town Housing Parcel shall be in substantially the same physical condition as it is as of the date hereof; and

b. Stilo shall continue in effect any insurance coverage relative to the First Town Housing Parcel.

8. Representations and Warranties of the Town. The Town hereby warrants and represents that it has full authority to enter into and perform its obligations under this Agreement. The Town hereby further warrants and represents that no real estate commission is due to be paid as a result of its involvement in this Agreement and hereby, to the extent permitted by law, agrees to defend, indemnify and hold Stilo harmless from and against any claim by third parties arising by, through or under it for brokerage, commission, finder's or any fees relative to this Agreement or the transfer of the First Town Housing Parcel. This Section 8 shall survive the Closing Date.

9. Closing. The Town and Stilo shall notify Stewart Title when the conditions to closing set forth in Section 4 of this Agreement are satisfied. Stewart Title shall schedule a closing of this Escrow (the "**Closing**") within three (3) Business Days thereof, and at such Closing, the deed for the First Town Housing Parcel shall be recorded.

a. The Town and Stilo, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title such documents as may be reasonably necessary or appropriate to issue the Title Policy.

b. Stilo, at its sole cost and expense, shall deliver or cause to be delivered to Stewart Title the following:

i. A certificate informing the Town that Stilo is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code, as amended (the "**Code**"), and Regulations issued thereunder, such that withholding of tax is not required at the Closing.

ii. The funds for the standard Owner's Policy of Title Insurance in the amount agreed upon in Section 4(a) above insuring that the Town is the owner of indefeasible fee simple title to the First Town Housing Parcel subject only to the Permitted Encumbrances, and the standard printed exceptions included in an Arizona standard form of Owner's Policy of Title Insurance.

iii. Such other documents as may be reasonably necessary or appropriate to issue the Title Policy.

c. All normal and customarily pro ratable items including, without limitation, real property taxes, shall be prorated as of the Closing, Stilo being charged for all relating to the period up to the Closing and the Town being charged for all relating to the period on and after the Closing. If the actual amounts to be prorated are not known as of the Closing, the prorations shall be made on the basis of the best evidence then available and, thereafter, when actual figures are received, a cash settlement will be made between Stilo and the Town. No proration will be made in relation to insurance premiums, and any existing insurance policies will not be assigned to the Town. The provisions of this Section shall survive the Closing.

d. In addition to the other costs and expenses specifically provided for herein, the costs and expenses of the Closing shall be borne as follows:

i. Stilo shall be obligated for and shall pay:

A. The escrow fee, if any, charged by Stewart Title;

B. The cost of recording the Deed;

C. The premium for the standard Owner's Policy of Title Insurance without endorsements (but not the additional premium for an extended owner's policy);

D. The cost of the Survey; and

E. Stilo's attorneys' fees;

ii. The Town shall be obligated for and shall pay:

A. The additional premium for an extended owner's policy of title insurance, if desired, and for endorsements;

B. The Town's attorneys' fees;

e. Upon completion of the Closing, Stilo shall deliver possession of the First Town Housing Parcel to the Town as required by this Section 9.

10. Notices. Any notice provided or permitted to be given under this Agreement shall be in writing and shall be served by at least one of the following methods: (a) depositing same in the United States mail or with an overnight courier service, addressed to the party to be notified, postage prepaid and certified with return receipt requested if mailed; (b) by delivering the same in person to such party; or (c) by facsimile provided the sender obtains a confirmation of successful transmission. Notice given in accordance with this Section shall be effective upon the earlier of: actual receipt (or refusal of receipt), however given or received; or 72 hours after deposit in the mails; or one (1) Business Day after deposit with an overnight courier service, in the manner set forth above; and notice given in any other manner shall be effective only upon actual receipt (or refusal of receipt) at the address of the addressee. Notwithstanding the foregoing, notices actually received by any party, however given or received, always shall be effective and shall be deemed effective upon the earlier of: actual receipt, or the end of the time period for effectiveness specified in this Section for the method of delivery actually utilized. For purposes of notice, the addresses and facsimile numbers of the parties are as follows (or such other addresses or facsimile numbers as either party may from time to time furnish in writing to the other party):

If to Stilo, to:

Stilo Development Group USA, LP
c/o Tom DePaolo
7610 East McDonald
Scottsdale, Arizona 85250
Facsimile: (480) 991-8375

With a copy to:

Grady Gammage
Gammage & Burnham, PLC
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004-4470
Facsimile: 602-256-4475

If to the Town, to:

Town Manager
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: 928-638-9910

With a copy to:

Town Attorney
Town of Tusayan
P.O. Box 709
Tusayan, Arizona 86023
Facsimile: 928-638-9910

If to Stewart Title:

Stewart Title Company
150 N. Verde Street, Suite 102
Flagstaff, Arizona 86001-5257
Attn: Bobbie Acklin
Facsimile: 928-779-3277

11. Assignment. Neither party may assign their rights or obligations under this Agreement without, in each case, the prior written permission and consent of the other party, which permission and consent may be granted or denied in such other party's sole discretion.

12. Binding Effect; No Third Party Benefit. This Agreement shall inure to the benefit of and be binding on the parties hereto. This Agreement is for the sole benefit of Stilo and the Town, and no third party (including, without limitation, any real estate broker or any subsequent owners of any of the real property effected hereby) is intended to be a beneficiary of or have the right to enforce this Agreement.

13. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. Any claim or dispute arising out of or related to this Agreement or the enforcement or interpretation hereof shall be brought in a court of competent jurisdiction sitting within Coconino County, Arizona.

14. Default, Termination and Remedies. If either party fails to perform any of its obligations or agreements hereunder, the other party shall have the rights and remedies set forth in the Development Agreement, as amended.
15. Entire Agreement; Exhibits; No Oral Modification. The Development Agreement, as amended and this Agreement (including the Exhibits hereto) form the entire agreement between Stilo and the Town concerning the real property described herein and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.
16. Miscellaneous. Whenever herein the singular number is used, the same shall include the plural, and the plural shall include the singular where appropriate, and words of any gender shall include the other gender where appropriate. The headings of the Sections contained in this Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement. The words "**hereof**" and "**herein**" refer to this entire Agreement and not merely the Section in which such words appear unless the clear meaning is otherwise. As used herein, the term "**Business Day**" shall mean each day Monday through Friday except days on which Stewart Title is closed or national banks located in Flagstaff, Arizona are authorized or required by law or other governmental actions to close.
17. Multiple Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signature of, or on behalf of, each of the parties hereto. A signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
18. Construction. This Agreement and any documents delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions thereof. Moreover, each and every provision of this Agreement and such other documents shall be construed as though both parties hereto had participated equally in the drafting thereof. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.
19. Recordation. Neither this Agreement nor any memorandum thereof shall be recorded in the office of the county clerk or recorder of the county in which the subject real property is located.
20. Attorneys' Fees. In the event of litigation between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive the Closing.

21. IRS Real Estate Sales Reporting. Stilo and the Town hereby appoint Stewart Title as, and Stewart Title agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Code Section 6045(e). Stewart Title shall prepare and file the informational return (IRS Form 1099-B) and any other necessary reports, returns and statements if and as required by, and otherwise shall comply with the terms of, Code Section 6045(e). Stewart Title further agrees to indemnify and hold Stilo, the Town and their respective attorneys harmless for, from and against all claims, costs, liabilities, penalties and expenses resulting from Stewart Title's failure to file the appropriate reports and otherwise comply with the terms of the Code pursuant to this Section.

22. Time is of the Essence; No Waiver. Time is of the essence of this Agreement and every term, covenant and condition hereof. No waiver or omission by any party to enforce any rights or remedies under this Agreement shall constitute a waiver of such rights or remedies or to require the other party's strict compliance with the terms hereof. Any waiver by any party, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver of any other default or in any other instance.

THE TOWN:

THE TOWN OF TUSAYAN, an Arizona municipal corporation

ATTEST:

Town Clerk

By: _____
Greg Bryan, Mayor

APPROVED AS TO FORM:

Town Attorney

STILO:

STILO DEVELOPMENT GROUP USA LIMITED PARTNERSHIP an Arizona limited partnership

By: _____

Printed Name: _____

Its: _____

STEWART TITLE COMPANY:

By: _____

Print Name: _____

Title: _____

LIST OF EXHIBITS

- | | |
|-----------|----------------------------------|
| Exhibit A | Depiction of the Kotzin Property |
| Exhibit B | Depiction of the TenX Property |
| Exhibit C | First Town Housing Parcel Deed |
| Exhibit D | Legal Description |

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